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National Technical Information Service
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Transcript of National Commission on New Technological
Uses of Copyrighted Works Meeting Number 17
Held at Washington, D.C. on October 21, 1977

National Comm on New Tech Uses of Copyrighted Works, Wash., D.C.

Oct 77

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NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS
(CONTU)

Tel: (202) 557 0905

June 7, 1976

Washington, D.C. 20558

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Conradie John L. McClellan, Chairman
Subcommittee on Patents, Trade-Marks and Copyrights
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator McClellan:

I just received your kind letter, dated May 27, 1976 - it was forwarded to my office in New York City - and I haste to acknowledge it and to express my deep appreciation for your concern and involvement with the task of the National Commission.

You noted in that communication that the Commission had addressed a resolution solely to the House Committee on the Judiciary, in which it had offered to be of assistance in developing language and guidelines relating to library photocopying under Section 108 of Senate Bill 22. The resolution was so limited, I would point out, only because the House Committee was, at that time, considering the provisions of Section 108 as passed by the Senate on February 19, 1976.

Adoption of that resolution, however, but reflects the Commission's desire to be of assistance to both Houses of Congress in resolving the highly controversial issue involved and, needless to say, we shall endeavor to make certain that the guidelines developed will be consistent with the design and legislative history of S. 22. I shall, of course, see to it that your Subcommittee receives all our reports and other materials bearing on the subject.

In concluding, I cannot refrain from expressing the Commission's appreciation for your efforts on its behalf and applauding your dedication over the years in seeking a general revision of the Copyright Law.

Again, my thanks and warm regards.

Sincerely,

Stanley H. Fuld
Stanley H. Fuld
Chairman

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United States Senate

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON PATENTS, TRADE-MARKS, AND COPYRIGHTS
(PURSUANT TO SEC. 13, S. RES. 55, 91D CONGRESS)

WASHINGTON, D.C. 20510

May 27, 1976

The Honorable Stanley H. Fuld
Chairman, CONTU
Copyright Office
Library of Congress
Washington, D. C. 20558

Dear Judge Fuld:

The Senate Subcommittee on Patents, Trademarks, and Copyrights has been informed of the text of a resolution recently adopted by the National Commission on New Technological Uses of Copyrighted Works on the subject of library photocopying. The resolution offers the assistance of the Commission to the House Committee on the Judiciary "in helping to develop language and guidelines relating to library photocopying in the Senate Bill 22."

As the sponsor of the legislation creating CONTU, I support the objectives of this resolution. I had in fact amended an earlier version of my bill to specifically authorize Commission activity on certain aspects of the library photocopying problem. I have also long advocated efforts by the parties to develop appropriate guidelines.

I note that the resolution of the Commission refers only to the House Committee but I assume that the intent of the resolution is to assist both Houses of Congress in achieving a satisfactory resolution of this issue, particularly since Section 108 originated in the Senate. With respect to the provisions of Section 108 of S. 22, the guidelines to be developed would have to be consistent with the intent and legislative history of that bill.

Senate report 94-473 in its analysis of Section 108 states in part, "Concerning library photocopying practices not authorized by this legislation, the committee recommends that workable clearance and licensing procedures be developed." I believe that it is important

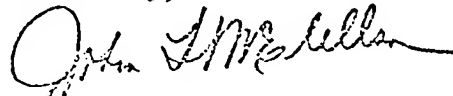
The Honorable Stanley H. Fuld
May 27, 1976
Page Two

that there be no disruption in the use of copyrighted materials by the patrons of libraries, following the coming into effect of S. 22, because of the absence of appropriate clearance and licensing procedures for the types of photocopying practices not included within the exemptions of S. 22. I therefore request, in accordance with the recommendation of the Senate Committee on the Judiciary, that the Commission in conjunction with the formulation of guidelines take appropriate initiatives in coordinating the establishment of necessary clearance and licensing mechanisms.

I also request that the Senate Subcommittee have the opportunity to participate in the Commission's photocopying activities on the same basis as the House Subcommittee and that the Commission make available to the Senate Subcommittee such reports and other materials as may be developed.

With kindest personal regards, I am

Sincerely,



John L. McClellan
Subcommittee Chairman

JLM/bnl

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES
OF COPYRIGHTED WORKS

Meeting No. 17

Room 2222 (Morning Session)
Room 2226 (Afternoon Session)
Rayburn House Office Building
Washington, D.C.

Friday, October 21, 1977
9:38 o'clock a.m.

Commissioners Present:

Stanley H. Fuld, Chairman
Melville B. Nimmer, Vice Chairman
William S. Dix
John Hersey
Rhoda H. Karpatkin
Dan Lacy
Arthur R. Miller
E. Gabriel Perle
Robert Wedgeworth
Alice E. Wilcox

Also Present:

Edward Applebaum, Library of Congress

CONTU Staff:

Arthur J. Levine, Executive Director
Robert W. Frase, Assistant Executive Director and Economist
Michael Keplinger, Assistant Executive Director and
Senior Attorney
Christopher Meyer, Staff Attorney
Jeffrey Squires, Staff Attorney
David Peyton, Policy Analyst
Dolores Dougherty, Administrative Officer
Patricia T. Barber, Librarian Analyst

P R O C E E D I N G S

CHAIRMAN FULD: May I call to order CONTU's meeting No. 17, held today in the Rayburn Office Building. Before we get underway, I'd like to open this session with a short statement for the record. The statement is prompted by a portion of the report of the Senate Committee on the Judiciary on H.R. 4836, the bill to extend the term of this Commission by seven months. I quote the following paragraph from that report.

"The report of this committee on the copyright revision legislation (Report No. 94-473) recognized that certain library photocopying activities would be acts of copyright infringement. The Congress obviously did not wish to prevent reasonable and prompt access to copyrighted materials, and consequently the committee recommended that 'workable clearance and licensing procedures be developed.' The Chairman"--and this is the particular sentence to which I am addressing myself--"The Chairman of the Commission has assured this committee that the Commission will assist the creation in the private sector of such clearance mechanisms. The committee believes that the creation"--I am still quoting--"The committee believes that the creation of such a clearing house prior to the January 1, 1978, effective date of the revision act is highly desirable and that the efforts of those in the private sector to establish such

clearance mechanisms should be encouraged by public policy." That is the end of the quote.

I regret that there seems to have been some misunderstanding with respect to one of the sentences which I read. "The Chairman of the Commission has assured this committee that the Commission will assist the creation in the private sector of such clearance mechanisms."

I have not had any oral communication with Senator McClellan or any other members of the Committee on the Judiciary or any members of its staff concerning this matter. I did receive a letter from Senator McClellan, dated May 27, 1976, requesting that the Commission work with the Senate committee, as well as the House committee, in developing, in cooperation with interested parties, guidelines under Section 108 of the Copyright Revision Bill and in taking--I quote again--"appropriate initiatives in coordinating the establishment of necessary clearance and licensing mechanisms." Let me quote a portion of Senator McClellan's letter to which I just referred.

"Senate Report 94-473 in its analysis of Section 108 states in part, 'Concerning library photocopying practices not authorized by this legislation, the committee recommends that workable clearance and licensing procedures be developed.' I believe that it is important," Senator McClellan continues, "that there be no disruption in the use

of copyrighted materials by the patrons of libraries, following the coming into effect of S. 22, because of the absence of appropriate clearance and licensing procedures for the types of photocopying not included within the exemptions of S. 22. I therefore request," he concluded, "in accordance with the recommendation of the Senate Committee on the Judiciary, that the Commission in conjunction with the formulation of guidelines take appropriate initiatives in coordinating the establishment of necessary clearance and licensing mechanisms."

There was no reference, I note, to private sector.

I responded to Senator McClellan on June 7, '76, but my response dealt only with assurances that the Commission would work both with the Senate and House committees on the matter of guidelines for Section 108; and I did not refer in any way to the Senator's request that the Commission "take appropriate initiatives in coordinating the the establishment of necessary clearance and licensing mechanisms."

Even more important, there was no reference, as I indicated, in Senator McClellan's letter--and obviously not in my response--to the creation in the private sector of a clearing mechanism.

I submit for the record the full text of Senator McClellan's letter to me of May 27, 1976 and my response of June 7th of that year.

[Documents referred to follow.]

CHAIRMAN FULD: We continue now with the agenda. At the January '77 Commission hearing we heard a report by Peter Urbach on the plans of the National Technical Information Services for the supplying of authorized photocopies of periodical articles to its customers. We now have a progress report on that program from Mr. Urbach, which I am handing to the reporter for inclusion in the record of today's hearing.

[Document referred to follows.]

- - -

STATEMENT OF
PETER F. URBACH
DEPUTY DIRECTOR, NATIONAL TECHNICAL INFORMATION SERVICE
NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS
WASHINGTON, D.C., OCTOBER, 1977

This paper updates the testimony given to CONTU in January on the NTIS Journal Article Copying Service (JACS).

The general concept of the new NTIS service remains as it was presented to CONTU nine months ago, a switching service to permit the 13,000 NTIS deposit account customers to obtain authorized copies of articles rapidly and easily from a wide range of journals. At present, the service covers 4,500 journals and is being tested with three customers. Five to ten orders per day are being handled in this test mode while operational problems with computer programs and fulfillment sources are being worked out. We expect to add additional test customers to the service later this month and expand it to most NTIS deposit account customers before the end of the year. We believe that we will generally be able to meet our design target of six-day service from customer order to customer receipt of the requested article.

The results of our requests to publishers for copyright license are likely to be of particular interest to CONTU. To date, we have contacted 230 publishers requesting permission to copy articles and offering a \$.50 per article copy royalty. Seventy publishers have responded favorably to our request and

signed our license agreement. An additional twelve publishers are still reviewing our proposal and were unable to give us a definite answer. Twenty-seven publishers responded negatively, several indicating that they were unwilling to grant us a license until current uncertainties about the new copyright law and the developing Copyright Clearance Center (CCC) are clarified. Other publishers felt that granting permissions could jeopardize their subscription business and chose not to grant us a license for this reason. Unfortunately these 27 publishers include some of the very large science and technology publishers. A total of 114 publishers including 90 foreign publishers, to whom we wrote fairly recently, has thus far failed to respond to our request.

Several publishers who are currently in the business of supplying copies (reprints) of their own articles for their own journals were willing to serve as fulfillment sources for us. We refer our customers' orders for copies of articles from these journals to these publishers, who provide the copies directly to our customers. We did not originally contemplate this arrangement but it is as satisfactory as sending the order to a library or information service. To date, three publishers have entered into this type of arrangement with us and two others are considering it.

These data on our license requests are summarized in the table below:

Summary of NTIS License Requests

| | |
|-----------------------------------|-----------|
| Publishers contacted - 230 | |
| License Agreements signed | 70 |
| Publisher-fulfillment source | |
| arrangements made or contemplated | 5 |
| Proposal under review | 12 |
| Rejections | 27 |
| No response primarily domestic | |
| publishers, initial mailings | 26 |
| No response primarily foreign | |
| publishers, later mailings | <u>90</u> |
| Total | 230 |

A total of 850 journals, primarily in science and technology, are covered either by our license agreements or provided directly by the publishers to our customers.

We have also contracted with the Institute for Scientific Information (ISI) to serve as a fulfillment source for 3,650 journals for which ISI already has publisher's permissions. Certain journals offered by ISI, from publishers who explicitly turned down the NTIS request for a license, are excluded from those offered by NTIS to its customers.

C D

Finally, we are also exploring the possibility of working with another fulfillment source which has license agreements with publishers covering a large number of journals.

Fulfillment of customer orders is handled by one of six sources: The Franklin Institute Library, Information Unlimited, ISI and three publishers. We expect to add the British Lending Library Division and several other sources to this list in the near future.

The actual operation of the service is highly mechanized. Orders are received at NTIS in computer readable form via TWX, Telex, dial-up terminal or Western Union DataGram. The DataGram service permits the user to call a "free" "800" number and dictate the order to a Western Union operator. Western Union keyboards the order and transmits it via TWX to NTIS in computer readable form. NTIS has been using this service for some time for premium and rush order service for technical reports. The computer readable orders from this range of input sources are received by a dedicated microcomputer connected directly to the TWX and telephone lines. The microcomputer edits the order and, in most cases, communicates any discrepancies back to the customer immediately. At the end of the working day, all of the orders are sorted and transmitted to the appropriate fulfillment source. The microcomputer also generates the records for our

automated accounting system to debit each customer's deposit account and credit the publisher with the royalty payments.

We are continuing to seek license agreements with additional publishers at the fixed \$.50 per article royalty. However, it appears from the development of the Copyright Clearance Center and from our discussions with some publishers, that a variable royalty, determined by each publisher, possibly different for each publication, will be required by a number of publishers. If this proves to be the case, NTIS may use the payments mechanism of the Copyright Clearance Center, with its variable royalty, to provide payments to these publishers. This would mean that the NTIS service would have to be offered on a variable price, rather than the present fixed price basis, to accommodate the variable royalty.

We expect that the establishment of the Copyright Clearance Center will permit us to offer our customers access to many additional journals. Essentially all of the publications included in the Copyright Clearance Center in areas of interest to our customers could be included in our service. We need only find a fulfillment source that has the publication available.

There has been some discussion in the trade press about the possibility of conflict or competition between the Copyright Clearance Center and the NTIS service. We believe that the two

services are entirely complementary; the one is a royalty payments mechanism for users who have access to journals, the other is a copy supply service, including royalty payment, for users who do not have access to journals. Most of our customers will probably use both services.

We expect a multifaceted system for supplying journal article copies to evolve with many different types of copy suppliers, some utilizing the Copyright Clearance Center and others operating under direct agreements with publishers. We see our role as limited to serving as a communications mechanism between our customers and a number of different types of copy suppliers, and to handling the associated accounting transactions. Although this is a limited role, we believe the new service will provide a useful means for some NTIS customers to access journal literature that they cannot otherwise conveniently obtain.

CHAIRMAN FULD: The first witness this morning will present testimony on photocopying on behalf of the Council of National Library Associations, Dr. Frank E. McKenna, Executive Director of the Special Libraries Association and Chairman of the Council of National Library Associations' Committee on Copyright Law and Implementation, will present the testimony. Dr. McKenna is a past president of the Special Libraries Association and former editor of its journal, Special Library. He has requested an opportunity to comment briefly on the testimony of some of the later witnesses in today's hearing. And the Commission is happy to give him that opportunity at the end of the day.

Representatives of the major library associations are appearing with Dr. McKenna this morning, and we will ask him to introduce them to us.

Dr. McKenna.

STATEMENT OF DR. FRANK E. MCKENNA, EXECUTIVE
DIRECTOR, SPECIAL LIBRARIES ASSOCIATION,
ACCOMPANIED BY PROFESSOR JULIUS L. MARKE,
DR. EDWARD G. HOLLEY, MR. JOHN G. LORENZ,
MRS. NINA W. MATHESON, AND MRS. SUSAN SOMMER

DR. MCKENNA: Mr. Chairman and members of the
Commission:

The Library Associations of the United States are
pleased to have this opportunity to speak with the members

of the Commission. Before I introduce my colleagues who are here present, I would like to make one brief observation. And that is that it is perhaps appropriate to note that today's meeting of the Commission takes place almost on the first birthday of the new copyright law because on October 19, 1976, President Ford signed Public Law 94-553.

Now let me introduce my colleagues. At the extreme right, Professor Julius J. Marke, who is law librarian and professor of law at New York University Law School. Professor Marke is chairman of the Copyright Committee of the American Association of Law Libraries.

At my immediate right, Dr. Edward G. Holley, Dean of the School of Library Science, University of North Carolina, Chapel Hill. And Dr. Holley is chairman of the Copyright Committee of the American Library Association.

At my immediate left, Mr. John G. Lorenz, who is Executive Director of the Association of Research Libraries.

Mr. Lorenz was formerly Deputy Librarian of Congress.

Continuing to the left, Mrs. Nina W. Matheson, Director of Health Sciences Library, the George Washington University. Mrs. Matheson is chairman of the Copyright Committee of the Medical Library Association.

And finally Mrs. Susan Sommer who is librarian of the Music Collection, Performing Arts Research Center, New York Public Library, at Lincoln Center. Mrs. Sommer heads

the Copyright Committee of the Music Library Association.

We propose that I will make the major presentation today, and all of my colleagues are ready to answer questions by members of the Commission and especially as there may be items that fall into the areas of their particular expertise or the particular interest of their library.

Our purposes today are basically a two-fold effort. One, to state our concern that no segment of the public-- that is, the users of all libraries, be impeded in their access to information. And, secondly, to tell the Commission about our actions in recent months and the past year. These actions are intended to help the members of our association to understand what they must do in view of some provisions of the new copyright law, and equally importantly that our members understand what rights are permitted by the new law, particularly as libraries act as agents for their users. Some of these recommendations have now been completed, are being published and distributed, and those are in appendixes B, C, and D of our written submission, and they will be discussed briefly later.

Because this six-member committee is under the auspices of the Council of National Library Associations, with acronym CNLA, it is appropriate to speak briefly of the history of CNLA. It was organized in 1942 to serve as a forum for discussion of common problems and concerns of library

associations whose basic interests may at first glance appear to be very disparate.

As examples, let me cite two other CNLA committees. The Education Committee is concerned that the curricula of library schools will reflect the diverse needs for future practicing librarians. Another committee, that on prison libraries, was concerned that appropriate library services be available for inmates in detention facilities of all types. This work was in conjunction with the American Correctional Association and of course with ALA's Division of Health and Rehabilitative Services.

During the congressional consideration of the Copyright Revision Bill, the six associations represented here had worked together to represent the interests of different types of libraries. In December, 1976, the CNLA Copyright Committee was established to include the interests of additional member associations, and the member associations of CNLA are listed beginning at the bottom of page 2 and continuing at the top of page 3 of our statement.

In our written statement on page 4 we have emphasized the need for equal concern and equal treatment of all copyrighted material regardless of their subject content. Works of creative authorship as well as those in the arts and humanities are of concern to libraries and librarians, a concern no less important than those for the sciences and

engineering.

Mr. Chairman, if I may now, I wish to insert for the record three items, relatively minor corrections. One is for clarification and the other two are for corrections.

CHAIRMAN FULD: Surely.

DR. MCKENNA: On page 3, paragraph 2, the third sentence: We stated that the Library Association's 55,000 members /represent approximately 21,000 libraries of all types, parentheses "except school libraries," close parentheses. This sentence is possibly one of the hazards of comparing a statement with a committee. We had talked to one another so that we knew what we meant and then did not realize until it had been submitted that there could perhaps be misunderstanding. The figure of approximately 21,000 libraries is obtained from the King Research Report. The King study did not include school libraries. And the 55,000 members of our association do include some school librarians. So, therefore, we ask that the third sentence be changed to read for clarity of understanding: "We estimate that the 55,000 members represent the approximately 21,000 libraries included in the universe of the King Research Study, plus many librarians serving approximately 89,000 school libraries."

The second item that I wish to submit for correction on the record is also on page 3, also in paragraph 2, in the last sentence. The number of library users is a figure

that cannot be determined with real precision. So, we feel that it is conservatively appropriate to change the last sentence to read: "We estimate that the member librarians and their libraries serve approximately 80 percent of the population."

And the same correction should be made on page 23, paragraph 3, line 5. "Fair use assures access to information by the approximately 80 percent of the population who are library users."

And that is the extent of the three corrections submitted.

To facilitate an understanding of the development of library services in the United States, let me sketch a brief historical review. We feel that the development of libraries and their services in the United States is unique, particularly because of their emphasis on ready access to information since even before the days of the Revolutionary War. The concept of libraries for the general public had begun to emerge before the Revolution. Specialized libraries had begun to develop, such as medical libraries and those serving special needs of guilds of artisans.

As the population increased and the number of publications increased, it soon became apparent that no one library could collect all informational materials. And, therefore, informal arrangements were initiated even in those

early years to obtain materials through interlibrary loans, even though transportation was quite slow. Eventually it became obvious that a professional association was needed in librarianship similar to organizations already existing in law and medicine, for example.

The American Library Association was organized in 1876, one hundred years after the Declaration of Independence. The need for associations to represent specialized information interests soon followed. Medical Library Association in 1898, American Association of Law Libraries in 1906, Special Libraries Association in 1909, and then other groups followed in more recent years.

If one examines the history of libraries and their associations in this country, the basic theme has been to consistently provide ready access to information to the users of libraries. Such ready access has been and continues to be considered as fundamental for the best interests of all sectors of our American society.

Often it is not recognized that library associations are publishers in their own right. We believe, therefore, that library associations are in a unique position because they are concerned with their own substantial publishing interests as well as with the more obvious concerns of libraries. These publishing interests include both periodical and book publication programs. Three of the six persons appearing here

today are directly involved with the publishing programs of their associations or with those of university presses. All six have been authors of articles in periodicals, including non-library periodicals, many for compensation. Some are authors or co-authors of books. Each individual has also had extensive experience as a working librarian at all levels of responsibility.

A more detailed background sketch of each of my colleagues appears in Appendix A of our submission.

CHAIRMAN FULD: Would you talk a little louder.

DR. MCKENNA: Oh, I am sorry. May I ask for a glass of water?

[A glass of water was provided to the witness.]

DR. MCKENNA: The librarians represented by this committee consider libraries to be the agents of library users in the constitutional balance between creators and users which the Constitution states is the aim of our copyright law. We stress this point not because we are insensitive to the rights of creators but because we believe progress is best achieved by the widest possible access to intellectual property. It is important that we emphasize the need for equal concern and equal treatment of all copyright materials regardless of subject. Works of creative authorship as well as those in the arts, humanities, and the so-called soft sciences must be considered on the same basis as works in the

so-called hard sciences and technology. An example is that of the Music Library Association. It is our belief that the use of music in a library is analogous to the use of any other materials in libraries even though music is written in a different, quote, language, unquote, from that in conventional books and periodicals. The photocopying of copyrighted music is thus subject to equivalent regulation under the new law. The Congress recognized this principle by incorporating the guidelines for educational uses of music and further examples of permissible music copy into the House Report as it relates to Section 107, fair use.

When the 1909 Copyright Law was enacted, a congressional document published at that time noticed that copyright is purely a statutory right and is conferred, quote, not primarily for the benefit of the author but primarily for the benefit of the public, unquote.

We believe that the new law, which embodies the fair use concept along with the guidelines developed by the interested parties will be fair to everyone--creators, publishers, and users. In recent months some organizations have said that the new law is ambiguous. We emphasize that the law was achieved only after 20 years of efforts by interested and contending parties until mutual agreements based on compromise were reached, and we must note here the good offices rendered by CONTU in this matter.

Librarians are preparing to operate within the requirements of the new law and to monitor its effects during the successive five-year review periods that are mandated in Subsection 108(i), and then to assist the Register of Copyrights to develop whatever legislative or other recommendations may be warranted. We feel strongly that libraries and their users should not pay for those photocopying rights which are available in the new law.

At this date, even before the effective date of the new law we do not believe that additional guidelines or definitions are needed. We are not sympathetic to reopening discussions of the 1976 Copyright Law at this time for revision of its accompanying guidelines or definitions or for the preparation of new ones.

Now let me turn to cite specific instances of what the library community has been doing in preparation for implementation of the new law. Parenthetically I think it should be noted that library associations are not trade associations. We are membership associations. Therefore, our reaction time may appear to be slow as we explore the reaction of our members. However, I think we have some quite definite results to report.

The first, the ALA Interlibrary Loan Committee had appointed a special committee to revise the standard inter-library loan request form because this form is also used for

photocopy requests. It has been revised so that it can be used by the requesting library to indicate compliance with the CONTU guidelines or with other rights that are permitted in other sections--for example, fair use.

Two checkoff items have been added to the inter-library loan form. The form and the accompanying explanatory material have been included in Appendix B.

The revision of the interlibrary loan form and preparation of explanatory text have been completed with the advice and approval of this CNLA Copyright Committee. Library supply houses have been notified so that the revised forms will be in stock before the first of the year. The library community is being advised of the existence of the revised form and how it should be used. It has already been publicized in the October, 1977 issue of American Libraries. It will appear in the November, 1977 issue of Special Libraries. And the other associations are planning similar publications.

The second item: we responded to both of the notices from the Copyright Office concerning rule-making regarding the wording of the warning of copyright, which is mandated by Subsections 108(c)(2) and (e)(2), to be posted in libraries where orders for photocopies are accepted and to be included on local order forms.

Three, the CNLA Copyright Committee and the ALA

Interlibrary Loan Committee have jointly developed recommended wording for the notice required by Subsection 108(a)(3) which must be included on the reproduction or distribution of a work, and also a recommended wording for the notice required by Subsection 108(f)(1) for display on unsupervised photocopying equipment in libraries.

Four, the ALA Interlibrary Loan Committee, with approval of the CNLA Committee, has prepared recommendations and suggestions for the photocopying record retention that is required by CONTU guideline No. 4, and that appears in Appendix D.

Fifth, a pamphlet is being prepared for distribution to members of the association. Its tentative title--perhaps like the titles of all publications, it is tentative until the last minute--but the tentative title is Proposed Copyright Clearance Procedures for Photocopying, and the subtitle Information for Librarians. We report these activities to the Commission as evidence that the library community has been and is diligently studying the new copyright law, is evaluating the rights available to the users of libraries, and is actively planning for implementation of the law.

One must carefully distinguish between two purposes of photocopying in or for libraries. The first is the photocopying for libraries themselves. For example, for purposes of preservation or replacement of library material

formerly acquired and purchased. And the other purpose is for users of libraries whereby the library is the agent for each user. We stress that libraries can easily accommodate their own interests--that is, preservation or replacement--to three subsections, 108(b), (c), and (e). For example, the replacement of damaged, deteriorating, lost or stolen materials or the reproduction of an entire work if, after a reasonable investigation it is found that a copy cannot be obtained at a fair price.

The CONTU guidelines which relate to 108(q)(2) offer equitable opportunities to libraries obtain photocopies of periodical articles in lieu of interlibrary loans to satisfy the requests of library users. Section 107, fair use, permits photocopying of copyrighted works for such additional purposes as listed in Section 107 and when these are appropriate.

If libraries were to stop the preparation of photocopies for their users, there could be one and only one result. That is, the losers would lose their access to information.

On page 6 of our written submission we have quoted from the Australian copyright report, and we have selected that quotation because we felt that in no way could we improve on that stated opinion. And let me read four sentences from that quotation from the Australian report. Quote: "Libraries are, in our view, properly regarded as information resource

centres. The need for copying library material by or for users of a library would not normally be satisfied by the library purchasing additional copies of the work. Quite apart from the severe financial burden this would place on libraries, we are satisfied that it is not possible to predict user demand for particular works in advance in most cases. In any event, the needs of the user, who may want to make notes on the copy or assemble it with other material, would not be met merely by the library having additional copies."

We feel that we must repeat that libraries are prepared to be guided by the mandated review after five years. Then all parties will be in a better position to determine whether there has been an equitable balancing between the services for library users and the rights of copyright proprietors. The King Research Report will provide a base line for comparison of photocopying activity for the effective date of the new law and with such activities five years after the effective date.

We have noted with interest the results obtained in the King Research Report, especially that these data suggest no need based on the current practices for additional controls or payments to be imposed on library photocopying services for library users. In fact, the report substantiates the position of the library component of the former Upstairs-Downstairs Conference that current library photocopying

practices offer no threat to the economic welfare of the proprietors of copyright.

More controls could not lead to the survival of publications whose existence is already marginal or precarious.

This committee has found no reason to criticize the statistical sampling by King Research. However, we do have some questions about some hypotheses advanced in the report which are not based on the data collected. The voluminous data collected and reported require careful reading and study to fully understand the results reported.

Apparently the easel is not available?

MR. LEVINE: Let me check.

CHAIRMAN FULD: Mr. Levine, I think we will take a recess for five minutes.

MR. LEVINE: That would be helpful.

[A recess was taken from 10:12 to 10:23 a.m., during which time an easel was provided.]

CHAIRMAN FULD: Whenever you are ready.

DR. MCKENNA: I would propose discussing figure 2 before figure 1. These data are taken directly from page 134, table 5.11, of the King Research Report. That page has a beautiful display of data, but we felt that by taking one which is typical of all of them, it might be more evident of the point.

The green circles are the proportion--well, it is proportional of serial transactions versus the age in years of a periodical. The green points are for local users as defined in the King Report. The blue are for intrasystem as defined in the King Report. And it is quite apparent that there is a rapid dropoff, particularly to the third year, and then a leveling off.

Unfortunately another point of data in the King Report in that table is for the five-year period six to ten years after the date of publication. And so there was no way of deriving from that five-year value, but it would appear that the decrease continues.

Such a decline in use had been reported previously by other persons studying this and has been published in a number of journals.

We note particularly that the so-called local and so-called intrasystem points within the accuracy of the data seem to fall on the same curve. And this committee continues to deplore efforts to say that these are two different kinds of transactions. And we feel that the fact that the reported data falls on the same curve or very close to the same curve supports our contention that intrasystem is really not different from local use.

Now, if we look at the data for interlibrary loan which are represented by the crosses, and here the age--year

one, year two, three, four, and five--seems to have a different shape of curve. However, the difference is from year one to year two, when it rises to a maximum, and then there is a falling off again. This same sort of maximum with a succeeding falling off has been noted by other investigators previously. And the explanation that has been given--and it seems to be a reasonable one--for the differences between the two curves is that in a local library or in the so-called intrasystem the user sees the material that is physically present in his own library. In the case of interlibrary loans, it appears that the user does not become aware of the existence of material that is not in his library until the indexes or abstract publications appear, and that often requires an additional year. And then the requests go to other libraries, and after that a decrease sets in again.

We feel that a curve such as this shows that the existing CONTU guideline No. 1(a) for material published within five years prior to the date of this request is adequate and that therefore there is no reason or no need to extend the period further back than five years before the date of publication.

At this point we wish to add an observation which may seem to be parenthetical but it has bearing; and that is that there are three statements in the legislative reports that seem to be consistently overlooked by many parties. In both

the guidelines for classroom use, classroom copying, and the guidelines for educational uses of music, there appears the same statement. Quote: "The purpose of the following guideline is to state the minimum and not the maximum standards of fair use under Section 107," unquote.

In the conference report, the following statement refers to the CONTU guidelines as they relate to Section 108-(g)(2). Quote: "The conference committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases now or in the future," unquote.

This is an enlarged version of figure 1, and we present it as a visual aid by displaying the data in the form of a bar chart that appears in the executive summary of the King Research Report dated September 12, 1977. Just yesterday we learned that there was a later revision of the executive summary, but this is based on the executive summary dated September 12th.

The shaded portion of each bar represents material copyrighted, and the unshaded portion material not copyrighted. So that books, other serials, together combined to form this bar for total.

If we consider only the serial portion in the copyrighted serials portion on the right side of the chart, there is local, there is intra, and there is interlibrary.

And then further in the King Report the effects of the CONTU guidelines are noted of less than six years and then combined with less than six copies.

From the numbers presented, the numerical values presented in the King Report, the photocopying of copyrighted serials under the CONTU guidelines is a relatively insignificant fraction of the total--that is, 500,000 out of 114 million, or four-tenths of a percent. If then we consider only the copyrighted materials--that is, the shaded bars--it is 500,000 out of 54 million, or nine-tenths of a percent. And finally if we consider the fraction of only the copyrighted serials, 500,000 out of 39 million, or 1.3 percent.

Librarians by and large have no objection to reasonable payment for new services which are not now provided by publishers. On page 19 of our submission, we have suggested three possibilities for consideration. These three are only suggestions and they are not intended to include all new possibilities. For example, a group of publishers could arrange to provide libraries with copies of periodical articles which are out of print or difficult to locate. And certainly then it would be appropriate for a reasonable service charge.

Another possibility would be publishers could maintain stocks of extra copies of articles. And we call these "offprints" to include both reprints and preprints. And

availability, we feel, must include expeditious delivery as well as suitable publicity to identify the materials that are available.

The third item is one which relates to complaints of many, if not all, librarians, that there could be or should be a telephone sales department staffed by competent personnel who are trained to respond to immediate consultation on availability, prices, delivery, and to expedite the actual shipment.

We have noted that if any or all such new services were provided, that there would be then a contrast between the passive aspects of collecting fees in the proposed Copyright Clearance Center, and that such expanded publishing services would inaugurate an era of real and active cooperation of publishers and librarians so as to satisfy the information hunger of our nation's people.

We have addressed the subject of libraries, copyright, and the new technology rather briefly. The subject of library photocopying has received of course much attention. There are other aspects of the new technology which concern the library community both today and in the future. Libraries, for example, are concerned about the potential copyright status of data bases in computer software. However, in the footnote we have noted that the CNLA committee does not feel that it is within its area of competence to discuss the

question of the copyright status of computer programs. We are concerned that this matter be suitably resolved so the services will not be adversely affected.

In the matter of data bases, let me cite a specific example. And that is the copyright status of an abstract that is transferred from the original publication into a data base. Of course immediately from that there follows the example of the copyright status of the computer output of an entire article in a copyrighted periodical, and we realize that the Commission has received reports on these matters. We have considered them with interest, and we trust that further discussions and evaluations will occur.

Let me cite two matters of new technology that apparently have not been discussed, or I have not found them in transcripts of the Commission hearings. And that is the use of lasers and the use of holograms. Approximately a year ago a device was demonstrated in Iowa of what would amount to be not a microfiche but the hologram equivalent of a microfiche. This apparently was an experimental model. But the fact that someone is working on these things should be considered.

We have commented on the extension of fair use to such a topic as off-the-air taping. And librarians did participate in the Airlie House conference on video recording for educational uses. And we would expect, as such

deliberations take place, that appropriate library interests will participate.

Let me then come to our conclusions. These have been stated before, but we would like to repeat them for emphasis.

One, libraries exist to serve their users. And libraries are the agents of the users. We are concerned that the public interest is preserved and protected through ready access to all information. Fair use assures access to information by the public. The rights of the public should prevail. There should be no bias to any segment of our society.

Two, that creative works of authorship and publications in the arts and humanities must receive the same consideration as the works in the sciences and engineering.

Three, there are a number of unanswered questions, areas of possible ambiguity and complex problems yet to be finally resolved. It is our belief that the law that has emerged represents a reasonable compromise plan which needs to be tested during the next five years.

Four, there is no evidence in the data of the King Research Report to suggest that there is need for any actions before the five-year review mandated in Subsection 108(i). We do not feel that additional guidelines or definitions are needed at this time. We are not sympathetic to reopening

discussion at this time of the 1976 Copyright Law, its reports, guidelines, and definitions as they affect photocopying in or by libraries.

Five, from the experiences to be gained during the next five years with the new law, all parties concerned will be better able to assess fully the impact of the new law on their individual goals and on their common goals, to provide all users of copyright information, copyrighted works, with ready and reasonable access to information.

Six, as noted in our statements, libraries are preparing their staffs and their users for the necessary changes in policies and procedures that need to be implemented on and after January 1, 1978 so as to ensure compliance with provisions of the law as now set forth.

We hope that the Commission will agree that all parties need the experience of working with the provisions of the new law. All parties should strongly resist further temptations at this time to make changes in guidelines, to develop new definitions of terms, or to attempt to reopen other areas where honest differences of opinion may still persist, but without a sufficient foundation of factual evidence. The library community looks to the Commission to provide leadership that will ensure the responsiveness of the copyright law to the new technology as it exists today and as it can be anticipated for the future. And we very

much appreciate this opportunity to express these views to members of the Commission. Thank you very much.

CHAIRMAN FULD: Thank you, Dr. McKenna. None of your associates would like to say anything?

DR. MCKENNA: I do not believe that they have a prepared statement, but each will be pleased to answer questions that members of the Commission may have.

CHAIRMAN FULD: Professor Nimmer.

VICE CHAIRMAN NIMMER: Dr. McKenna, I am not clear about your position with respect to the issue of fair use. Perhaps I missed something, and I may be misreading the report. But I see two possible inferences to be drawn. One, that it is your position that beyond 108, what lies in the area of fair use, it is simply your position that neither the Commission nor Congress should at this time try to fill in any further gaps or guidelines and just leave that area undefined and, therefore, presumably if it were to come to that, for the courts to determine. That is one possible inference.

The other possible inference I get is it is your position that because of the nature of photocopying, because of the societal benefit to be derived therefrom when done by libraries and because of, in your view, the minimal harm caused to creators, that it is therefore your position that any and all photocopying by libraries should be regarded as

fair use. Is either of those inferences correct, or is there some other inference to be drawn?

DR. MCKENNA: I believe that our intent is perhaps halfway in between but not including your last phrase, that any and all photocopying by libraries is fair use. Photocopying for the users at the request of the users of libraries, that is, for individual copies of individual items, we consider a fair use request on the part of the library user.

VICE CHAIRMAN NIMMER: But when you refer to user copying, are you referring to user reproduction as defined by 108 or user reproduction that may go beyond what 108 envisages?

DR. MCKENNA: That 107, fair use--that is, 108 is not concerned with fair use.

VICE CHAIRMAN NIMMER: Right.

DR. MCKENNA: But 107 through now its legislative statement of the judicially determined concept of fair use could be applied to individual requests of users.

VICE CHAIRMAN NIMMER: For example, if a user were to request an entire book, which would go beyond 108.

DR. MCKENNA: If the book is available.

VICE CHAIRMAN NIMMER: Then it is your position that should be regarded as fair use under 107; is that right?

DR. MCKENNA: No, no. Not an entire book. It

would be a part.

VICE CHAIRMAN NIMMER: But then are you not saying-- I am trying to get at this area that goes beyond 103 but arguably uses 107. A reproduction by a user that would not be permissible under 108 but that arguably would be fair use under 107 or arguably not fair use. And I am not clear on what the library associations' position is in that regard.

DR. McKENNA: Dr. Holley suggests perhaps that he can clarify what I have not been able to clarify.

DR. HOLLEY: I will try, but I think that is an interesting hypothetical situation, but it seems to me inconceivable that a library would photocopy an entire book that is available from the publisher in a reasonable amount of time^{or} on interlibrary loan. It seems to me that the expense of this is such that that is just not likely to occur.

VICE CHAIRMAN NIMMER: Can you or any of you suggest specific instances of library reproduction for users that would be beyond what is permissible under 108 but that should nevertheless be regarded as fair use under 107?

DR. MARKE: This is Professor Julius Marke. May I suggest, sir, that under 108 we, the libraries, are permitted to make a copy at the request of a reader of a small portion of a book. What is meant by a small portion under 108 may be a large portion under 107. Under 107 it may still be fair use to make a larger portion of a book even though under 108

we would consider a short part of it to be physically a certain number of pages. Under 107 we may be confronted with a situation where 10 or 15 additional pages would still be considered fair use under the four doctrines established under 107.

VICE CHAIRMAN NIMMER: Professor Marke, do you agree with your colleagues that reproduction of an entire book would not be permissible even under 107; so, the only difference between 107 and 108 in this regard is a somewhat larger but still a fraction of the book is permitted?

DR. MARKE: I would hesitate to make a blanket statement. I would like to be familiar with all of the possible potential situations which could arise, and I am not too sure of some of them. But it would seem to me, as Dr. Holley has indicated, that it would be a very rare instance when anyone would be requesting a full book to be photocopied when it is available reasonably on the market.

VICE CHAIRMAN NIMMER: But that is somewhat avoiding the question, is it not? The question is if it did occur--and conceivably it might be more likely to occur as technological developments make it more economically feasible to do that.

DR. MCKENNA: May I suggest another possibility? The 108(g)(2), the CONTU guidelines, are referring not to a book but to articles in a periodical and the five-copy limit

for a period of five years. It states that the requesting library shall not exceed this. However, if five totally unrelated users of the library come in--one today, one tomorrow, one in three months from now and so on--the library has had these requests from its users, and to each user this is a fair use even though it exceeds the five.

One of the problems that we see in the King data--and this is not a criticism of the King research organization--they did not separate out or did not ask the respondent libraries to define or to enumerate the number of photocopies under 107. If those could be separated out, identified individually, then this total of 500,000 would become even smaller. Because of these reasons, we feel that we need actual operating experience for five years.

VICE CHAIRMAN NIMMER: But then to get to sort of the summation of the point, am I correct then in understanding you to say that your associations do agree that there are some limitations on the quantity of photocopying reproduction that libraries may engage in for users, some limitation beyond which it would not be regarded as fair use but that you simply do not feel it appropriate at this time to try to mark out what that line is; would that be fair?

DR. MCKENNA: One thing that is quite clear, and I do not think any of my colleagues would argue, is that if an individual requested multiple copies--whether multiple is 2

or 22--at one time, that certainly is not permitted.

VICE CHAIRMAN NIMMER: What if that individual is a teacher and he wants it for his class?

DR. MCKENNA: That is taken care of under the guidelines for educational use.

VICE CHAIRMAN NIMMER: That is right, but that is a part of the same problem.

DR. MCKENNA: But I am not referring to a teacher. I am talking about the non-teacher, non-classroom request. That is, if I wanted to, say, circulate 20 copies to each member of my staff, that is obviously in excess.

VICE CHAIRMAN NIMMER: Thank you.

MRS. SOMMER: I have a specific answer of an instance which is spelled out in the House Report, as a matter of fact. The House Report, in guidelines for educational uses of music, gives an instance where it would be possible to copy a complete work which was covered by copyright for the emergency copying--I am reading from page 71--emergency copying to replace purchased copies which for any reason are not available for an immanent performance, provided purchased replacement copies shall be substituted in due course.

This would be a case where, it seems to me, a performer comes into town and his music remains on the airplane, as occurs occasionally. He could go to the

library and, with this excuse as fair use, make what would otherwise be an unacceptable copy from the library's copyrighted materials.

CHAIRMAN FULD: Alice.

COMMISSIONER WILCOX: Dean Hollev, in your role as the dean of a library school, it seems to me that you are in a unique position to respond as a typical faculty member in that you probably prepare lectures and also that you do some writing. Could you explain how you intend to use photocopies in a library?

DR. HOLLEY: As Frank was talking, I tried to think of ways in which we indeed do use materials in the school. We have a 12-hour basic course jointly taught by all the faculty for entering students in the master's program. And we compile an anthology in which the library science librarian is involved. For all the materials that we reproduce in that anthology we of course request permission and indeed we do pay fees for those materials. One of our complaints has been that we sometimes have a little difficulty getting publishers to respond as quickly as we would like to our permissions requests. And so anything that would improve that from that point of view would be helpful to us.

In class use, I was trying to think of a differentiation--I often reproduce, and I suppose that would be in that

50, 60 million copies for local use, things like transparencies from annual reports of libraries, from the North Carolina Board of Governors. We do use from Mr. Lacy's firm's Carnegie Commission Reports on Higher Education, but those are materials that are assigned to the students and they are checked out of the library just like other materials. We often put on reserve preprints of mine and other faculty members which will be coming out subsequently as articles before they appear in book or periodical form.

In addition, one of the things that it seems to me is going to be very helpful to someone as an author, I published an article in a rather esoteric journal for which we wished permission to reprint. Under the current law I had surrendered all of my rights. I will not do that again under the new law in 1978. I will reserve for myself the decision as to how those materials will be reprinted in the future. Presumably they can say also they will not print my article. But I suspect that that is going to be a problem for the publishers as they negotiate with authors rather than for librarians.

You mentioned my own writing. I remembered the little Saturday Review paperback--50 years or something of the best articles--and I wanted the Toynbee two pages or three pages from each of the Toynbee and Tushman articles for a paper I was preparing. I photocopied that to put

in my files. Last week I photocopied an article from a journal to which I subscribed. I suspect that that is fairly common because faculty members do indeed want to put these in folders so that when they prepare articles they have got them all in the same place. I suspect that that is included in a large number of that local--those were copyrighted materials for which I personally subscribed, and I suspect that that would also come into that particular argument.

These are the ways in which I use materials. I suspect that it is fairly typical for the people in my school. And my guess is it is not atypical for faculty members in other departments and schools. Does that answer the question?

COMMISSIONER WILCOX: Yes, pretty much so. I am mindful of something which I think Mr. Burchinal from NSF said one time, that the individual wants an article by an author about a subject, and technology has made it more possible today to retrieve the citation/^{from}on-line subject searching. Yet the publication process is such that it takes an individual article and puts it in an issue with other articles, and the library storage and retrieval further compounds the issue by combining that into a volume. And then the individual for his convenience wants to pull it apart again. So, it seems to me that if it was published individually, you would not have the problem.

DR. MCKENNA: I would add that the experiences that E. Holley has recited are not confined only to teachers. It is my experience that exactly the same process occurs among investigators in the scientific research laboratory. They may be collecting material for a specific publication or they may be looking towards a possible publication in future years. Their only other choice is to take a razor blade and cut the pages out of the library's copy, thus depriving everyone of their use.

CHAIRMAN FULD: Professor Marke.

DR. MARKE: May I just add I just completed a book on legal history. I am interested in popularizing legal history. This is not an ad for my book. But in all seriousness, I have been working in the field of 18th century and 19th century American law. And my experience has been over the years I have been writing these vignettes, I call them, I necessarily had to make copies of materials long outdated, long in the public domain. But in addition occasionally a reference to Warren on the history of the Supreme Court, one page, two pages, a quote from a Supreme Court justice or the like. I kept them by subject under the organization I had in mind for the book. Now I am going to press. I am checking copy. Very carefully I go back to this material, and this is the use of it. It is private. It is research--I hope scholarship as well. But, in any

event, I find this to be characteristic of the research going on in the law school, for example. The faculty there primarily is interested in a specific subject area and working in a specific subject area, will go to materials in that area. On occasion I have had the opportunity to photocopy a page of Nimmer on Copyright. But I just wanted that one quote that you had, especially about fair use, you may recall. [Laughter]

If I had it here, I would remember it. But I have it somewhere else in another folder. [Laughter]

I believe what goes on in the research area reflects the personal interest of the researcher. And, in essence, this is what we are dealing with, and this is in essence what the library is dealing with, the personal interest of the researcher. And once we get into the multiple copy area, we are not for that at all. Let us make that very clear. I know this is how I feel about it. We are interested in that single copy reflecting an individual use, individual interest, not for direct or indirect commercial advantage under those circumstances.

CHAIRMAN FULD: Yes, Professor Miller.

COMMISSIONER MILLER: First, could the documents that you referred to being prepared in anticipation of the new statute be made available to the Commission?

DR. McKENNA: You mean in addition to Appendixes B,

C, and D?

COMMISSIONER MILLER: Yes.

DR. McKENNA: Yes, certainly. We would be pleased to do that as they are available.

COMMISSIONER MILLER: Second, just a question as to whether any of you have any reaction to the photocopying not covered by the King Report, namely, machines in the library that are not within the supervision of the library, machines within the institution not under the supervision of the library, and machines outside of the institution obviously not under the supervision of the library. What I am really asking you is whether you can roughly quantify what percentage of copying you think goes on within an educational or research institution that has been captured by the King Report and what percentage has not been captured by the King Report.

DR. McKENNA: I will say--and my colleagues may contradict me--that I do not believe that we or anyone else can answer that question. If it is unsupervised equipment in the library, as far as I can see, the only knowledge would be the total number of exposures made when the meter is read each month. But those machines are also used for other materials, not copyrighted materials, even typescripts.

COMMISSIONER MILLER: You could not even guess?

DR. MARKE: May I add something? I believe you do

hit a very vital spot there. I personally believe that the real problem is not in the library but outside the library. There is a great deal of commercial photocopying being done off the campus of the university. I can only give you my limited experience. I am at New York University. In our law library, for example, we have unsupervised photocopying. We charge ten cents over there for a photocopy. We make it very clear to the students that you do not have to photocopy here if it is for your purpose; and the reason for it is that they can check out a book. Now, there are these photocopying commercial centers around the campus over which we have no control, and these are I think the areas where much of your photocopying is going on right now, not on the campus but off the campus.

As far as the unsupervised use is concerned, I happen to know that when it comes to moot court time at our place, where the student has to prepare five copies of his moot court brief, that most of the photocopying going on there is just for five copies of his individual copyrightable material which he has prepared for this moot court brief and in no way reflects any copying of copyrighted materials or otherwise under those circumstances.

So, I think it would be impossible for us to determine what the volume would be of unsupervised photocopying except for what I can see and based on the knowledge that I

have at NYU that it does not reflect--it does reflect, I think, fair use in the main on the part of the individual photocopier.

COMMISSIONER MILLER: A typical situation would be some member of your faculty put the book on reserve, and there are 150 people in that class. And that book slips off reserve for an hour or two hours. And that may go outside to an unsupervised machine run off in five copies for a study group.

DR. MARKE: You mean by someone other than the library staff?

COMMISSIONER MILLER: That is right.

DR. MARKE: Oh, yes, there is no doubt in my mind that this is what goes on.

COMMISSIONER MILLER: Let me just ask you a question. If each of the five of those students came in individually to make a copy of that article for his or her own use, just as one of your colleagues, does what you and Dean Holley have described, would that not be fair use if done individually?

DR. MARKE: On an unsupervised machine?

COMMISSIONER MILLER: Yes.

DR. MARKE: Obviously, to me.

COMMISSIONER MILLER: Or even on a supervised machine.

DR. MARKE: It seems to me.

COMMISSIONER MILLER: And one student comes in to make five copies for his or her four colleagues in the study group?

DR. HOLLEY: We would say no.

COMMISSIONER MILLER: You would say no.

One last question. Mr. McKenna, do you see any function for this Commission in the photocopying area?

[Laughter]

I got the feeling that other than a generalized sort of penultimate platitude, you see no function for us.

DR. MCKENNA: I think that is a fair description of our opinion. [Laughter]

COMMISSIONER MILLER: As well as the opinion of others, I take it. [Laughter]

DR. MCKENNA: I think that it is equally true that we would feel that if this Commission were in existence say in the fourth and fifth year from now when the review that is mandated is to occur, ^{hopefully} then/there could be a more constructive result.

COMMISSIONER MILLER: But right now we should declare a dividend and go home.

DR. MCKENNA: I am sorry, that will be your decision. I do not think it would be appropriate to go that far in our statement.

COMMISSIONER MILLER: Is that the consensus of the six?

DR. MARKE: It is my impression that CONTU has fulfilled its mission when it recommended to the Congress the guidelines that we presently abide by. Those guidelines, we all recall, were not just accepted; they reflected compromise. They reflect negotiation. Both sides had to give and take. And the end result that you have now, we feel, should be considered as the guidelines, not to be tampered with at this point but to be revealed within a period of five years, based on the experience that we have had with it.

DR. MCKENNA: Professor Miller, I would like to go back to one of your other questions of unsupervised equipment in a building, not outside the building, not one of these xerox parlors but in a large corporation, whether it would be one story or 20 stories. Obviously there are many unsupervised duplicating machines sitting in the corridors or in offices. And obviously almost everything under the sun is duplicated, including birthday cards, home-made Christmas cards, and the like. Now, there is one type of copyrighted publication not mentioned and has received very little attention, and that is the question of newsletters. Those are obviously expensive. They are four pages, six or eight pages. In my experience in an industrial research laboratory

such subscriptions go directly to an individual, not to the library--let us say the director of marketing or the director of forecasting or such. He sees an issue that is a hot item, and he may well say to his secretary, "Prepare ten copies." Or the director of research may be having a meeting tomorrow and says, "Get 20 copies, get 30 copies." These are obvious multiple copy situations, but they are occurring outside of the library's control.

I cannot suggest anything to you other than--as to how this could be controlled or how it could even be measured.

COMMISSIONER MILLER: My fear obviously is that the King Report is fine, but it may only show us the tip of an iceberg. And I guess I was asking you people whether you saw more of the iceberg than I saw.

DR. MARKE: For one thing, his statistics do not distinguish between those copyrighted materials which could have been copied under the circumstances and therefore would not create any problem as to the volume involved.

DR. HOLLEY: I think your point is well taken and one that probably deserves some study. I think it is the impression of a number of us that you are quite right, that library copying is a small part of the total copying. But I do not think anybody has any data on that.

CHAIRMAN FULD: Mr. Lacy.

COMMISSIONER LACY: Following up on Mr. Miller's opening question--and I am sure that neither side has meant this to be a facetious question and answer--I could easily envision a report of the Commission that said in effect that subsequent to the passage of the act creating the Commission and charging it with certain responsibilities about photocopying, the Congress passed the 1976 law with rather explicit provisions on photocopying and included in its Committee Reports references to guidelines that had been agreed on in teaching and in the case of some areas of photocopying initiated by or sponsored by CONTU, and that it had also made the provision for the five-year review, that all of this had happened after we had been given the charge to look into copyright, and we felt there was really nothing that we could do further on it except to express the hope that the quinquennial review would be wise and that everybody in the interval would behave responsibly and cooperatively. I can see strong reasons for that in not feeling that this is a useless Commission.

Would such a report, in your view--as I take it it would from the earlier answers--constitute an adequate discharge of the Commission's responsibilities in the photocopying area?

MR. LORENZ: I would like to add my assent to that kind of approach to the problem, Mr. Lacy. I think you all

realize, because many of you were involved in the many years of discussion and compromise that brought us to this point, and I do think CONTU played a very constructive role at a very critical point in bringing us to where we are. And therefore I feel that we do need further time to get some experience.

COMMISSIONER LACY: There is one other possible action that one could conceive of taking. The statement submitted on behalf of the library associations this morning gives some attention to future changes in technology, but most of them are technology other than photocopying narrowly defined. I think we do face the fact that over several years we will be dealing not only with the possibility of some new technology but what may be more important, more institutional adjustment to the more efficient use of existing technology. Most of the debate that has gone on about photocopying and most of the legislation and guidelines on it have assumed a given situation. They have assumed by and large photocopying has been principally a problem with the short document that is equivalent to a journal article. They have assumed that the normal mode of distributing this is the collection of them in journals which are subscribed to as series and issued as components for the number of articles in it and bound up into annual volumes with even more, and that that is the way you deal with this type of work. That has been an assumption

because it is. And they have also assumed that when a library needs a copy of a particular article--when it does not need the whole journal or the whole volume--that it would normally have turned to another library to borrow it. But since it is not feasible to lend it on that basis, the library produces a copy of that article and this is not viewed under the aspect of interlibrary loans. It would have been possible to view that quite differently. You could have viewed it as an aspect of a system of publication, not as an aspect of a system of interlibrary lending. And one would not normally have thought of another library as the normal source that you would turn to to get this.

But all I am saying is that we have assumed, at least so far as interlibrary copies are concerned, an existing pattern of serial publication and an existing pattern of photocopying that is a manifestation and aspect derivative of interlibrary loans.

I take it that almost everybody, including librarians and especially major research libraries that are burdened with the job of supplying most of these photocopies, feel that this is an incompletely satisfactory system--that, as the interlibrary loan statistics indicated, at least a year or so elapses before it is really realistically possible to get individual journal articles into such a system. The figures indicated there was very little interlibrary photocopying until after a year of publication. That libraries

who are not primarily set up--no reason they should be-- physically, technologically, or operationally to be publishers of separates, in effect are compelled to become so to serve their colleagues, and this is a considerable expense, not necessarily efficient. And also this is being troublesome, not primarily to large commercial publishers but primarily to university presses and association publishers who operate on very thin margins for very small audiences.

It might be possible for one to conceive within the framework of existing technologies an institutionally different mode of dealing with this problem. One such has been proposed in the Palmour report that suggested a national periodical system with the creation of a new kind of institution to deal with one important sector of photocopying, interlibrary photocopying. It also might be possible to conceive of a system with a basically private enterprise orientation. Your report has contemplated that, indicating a willingness to pay for an appropriately efficient service in this field. And there are various private enterprise ventures that are expanding in this area, inhibited in some degree, I feel, by the uncertainty as to how much of this market will be available to them and how much of it will continue to be supplied by libraries.

I would think it would be a fruitful area of speculation for all of us as to what was really the best way

of dealing with this kind of problem in terms of achieving the most efficient dissemination of this kind of information that is the core of the problem we have. Then looking back on copyright, not necessarily as a balance somewhere in the midpoint between one set of interests and another and a particular given institutional structure, but what would be the copyright provisions that would most effectively encourage the emergence of a superior way of doing it. Now, I have no preconceptions as to where that would come out, or not many. [Laughter]

Not very firm ones. But I do think that that is the thing that during this intervening five years we might all think about and not simply sit back and wait five years and say, "This particular aspect of this has been a nuisance, and we could clean it up; and this little point is technical." It is conceivable that the CONTU might be endowed with some wisdom to give advice as to kinds of things that ought to be looked at and thought about by all of us during this five-year period. But I suspect any such endowment is going to need to come from witnesses like yourselves and from the library and author witnesses that will be testifying and perhaps from some of the scientific and research associations. And as one of the Commissioners--and of course I do not speak necessarily for the whole Commission--I would welcome any subsequent reflections along this long-range

thought that the library profession might want to provide.

DR. McKENNA: May I suggest one factor that should be included in these considerations of new approaches, particularly new technology, and it is one factor that rarely does anyone conceive of. We have microforms, microfilm, fiche, what have you. These have existed and have been available for many years. Libraries have obtained them largely as a space-saving device/^{so} that they can release, sell, five or six or ten shelves of books and replace it with two inches or three inches.

COMMISSIONER LACY: Plus a reader.

DR. McKENNA: Well, a reader. Well, hopefully the sale of the volumes will pay for the price of the reader. But the problem then comes with the user who is accustomed to holding a book comfortably in his hands in this fashion [indicating] and does not want to adjust his mode of reading. So, then the reader printers follow because the reader wants to take a hard copy home with him or to his office.

But I think that whether a microfilm reader printer or anything new that we could conceive of, we have to take into account the backwardness of the average human being who does not want to change his habits, and therefore it is going to take a generation to--

COMMISSIONER LACY: Really, all I wanted to say is I think we all welcome--I do certainly--what seemed to me the

very constructive and sound testimony that has been presented this morning, and we welcome going beyond that to any long-range thoughts that perhaps we should take into account in making longer-range recommendations to the Congress.

CHAIRMAN FULD: Mr. Hersey.

COMMISSIONER HERSEY: Since the authors and publishers will be testifying this afternoon, I do not want to go into any detail now; but I simply would like to remind my fellow Commissioners that in the language, with the extension bill for this Commission, it is specifically stated that one of the reasons for the extension is that we may assist the parties in developing further guidelines for library photocopying. I think the record will show that there is a difference of opinion about this issue. And I simply did not want us to close the book before we heard the rest of the testimony.

CHAIRMAN FULD: Mr. Perle.

COMMISSIONER PERLE: Mr. McKenna, early in your testimony you made the statement--I think it is an accurate restatement--that if libraries stopped making photocopies, the users would lose their access to information. Access. Do you mean access or the ability to get a hard copy conveniently and cheaply?

DR. MCKENNA: Perhaps I left out a significant phrase--access through the mechanism of interlibrary loan.

They could still read what is available in their local library. But materials not in their local library that are obtainable only through photocopies in lieu of interlibrary loan, they would lose^{that}/access.

COMMISSIONER PERLE: Section 107 sets forth four points which are to be included in the measurement of what is fair use. Am I right that you have added two more in your testimony? One is the cost of reproduction as a limitation on fair use and, second, speed of reproduction. Is that a fair conclusion to draw?

DR. McKENNA: I would say speed of delivery as opposed to the actual cost. Because the average user, if he is a serious research economist, whatever, has the idea he wants the material.

COMMISSIONER PERLE: When we are talking about reproducing an entire book, you and Holley just dismissed it by saying, "It is ridiculous. Nobody would get a whole book because it costs too much." In effect, that is what you said. That says to me that your limitation is the cost of reproduction, which strikes me as a very, very strange way of determining fair use.

DR. McKENNA: I cannot put words into Dr. Holley's mouth, but I do not think that either of us intended that example.

COMMISSIONER PERLE: I am sure you did not intend

it. What I want to know is, Can we draw the conclusion that at some point in time all of us will be regarding the propriety of photocopying as that which is cheap rather than that for which the author and publisher receives compensation?

DR. McKENNA: Unless the economics of photocopying equipment--the generalized term, photocopying equipment--becomes much cheaper--

COMMISSIONER PERLE: It will. Make that assumption.

DR. McKENNA: All right, but let me--may I finish? Unless it becomes very much cheaper than anything that I know of at this point, the purchase of a book, the price even of an expensive book, is still cheaper than the page-by-page copying. And it is not only the x-cents that you pay to Mr. Xerox or 3M or who-is-it, but there are the labor costs that often are not considered.

COMMISSIONER PERLE: I think that you have added a fifth subpart to Section 107, at least.

DR. HOLLEY: I think that the question was, Assuming all of these other conditions are met, if the book is in print, would you photocopy it instead of going to inter-library loan? And my answer to that, from the point of view of the librarian, is that I could not imagine, all the other conditions having been met, that the librarian would indeed photocopy that. The obvious way to get that book is to order it from the publisher.

COMMISSIONER PERLE: Assuming only present technology.

DR. HOLLEY: Sure. But what else can you assume at this moment?

COMMISSIONER PERLE: I cannot assume that because I am bothered--I am really bothered--by the fact that all--not all, but a large portion of what I have heard today and during the course of these hearings seems to me to be couched, if you really examine it, in terms of expedience rather than need. That is why I went to access.

DR. McKENNA: In special libraries--and I am sure this applies to others--the need and the expedience are tied together. That someone, the user, does not want it quickly just for the heck of it.

COMMISSIONER PERLE: How do you know?

DR. McKENNA: I am saying this from my experience of some 20 years in an industrial research laboratory. There are persons who want to put it in a file such as has been described. Those individuals do not come and put pressure on the library--"How fast can I have it?" They order it. These individuals are clearly distinguishable from the one who comes and says, "Boy, I have heard of a hot article which is going to run a patent interference," for example, "and we must have this right away."

MRS. MATHESON: Frank.

DR. McKENNA: Yes.

MRS. MATHESON: I think there is another instance where we can speak of the urgency of need and expedience, and that is the use of medical information in health care delivery. And a statement that I would like to make about the issue of cheapness and expediency, I think that what the librarian intends to apply generally is a rule of reason in approaching any kind of activity in the library. And I think with Section 107 that would apply. When there are conditions where it would clearly be reasonable to exceed the guidelines or to exceed what appears to be common sense, then you do it. There are clear instances.

COMMISSIONER LACY: Following one particular point, there are examples, of course, in which one does not have to hypothesize an improved technology. There are a number of areas in which it is now possible to reproduce much more cheaply than the original can be bought complete copyrighted works: (a) An issue of a newsletter that might sell for \$15 and can be reproduced for 15 cents. (b) A photograph in the collections of a library, a copyrighted one, say, in the Prints and Photographs Division of the Library of Congress, for which the photographer might want to charge you \$50 but you could do perhaps some slightly inferior reproduction from the positive for a dollar. Reproduction of a copyrighted tape in a library's collection which can be done for far less

than one could buy it otherwise. Reproduction of the score of a popular song, which could be done much more cheaply than you could buy it. These are all cases where you do not have to hypothesize about its becoming cheaper in the future. And I would assume that the library assumption would be in some of these cases--108 specifically deals with it because of this very fact--would be that the library would not be engaging in fair use if it reproduced this entire work for a user even though it could do it--

COMMISSIONER PERLE: I do not know why you make that assumption.

COMMISSIONER LACY: I pose it to see.

CHAIRMAN FULD: Mrs. Wilcox, do you want to ask a question?

COMMISSIONER WILCOX: I was just going to pursue a little more the--Mrs. Matheson, do you have any feeling, as a practicing librarian, on what effect this would have on the potential market of subscriptions, say, in the medical library? Will the guidelines decrease subscriptions? Will they increase subscriptions?

MRS. MATHESON: The application of the guidelines literally--I doubt very much that they would need to increase the subscriptions. If you are referring to how are documents duplicated and used within something like a medical library network--

COMMISSIONER WILCOX: Yes.

MRS. MATHESON: I think the point that I would make would be the kinds of networks that have been set up for interlibrary loan among medical libraries have always been based philosophically on the principle that the library always has primary responsibility for its own constituency. And it is only in those instances where the need extends beyond reasonable scope that a network is used. But in a network there are those who are more able to take care of their own needs than others. And the basis of the medical library system--the lowest level of the medical library system--is the community hospital, and the specialized type of hospital which does have difficulty in making its resources stretch to the needs of all of its users. So, I think there you will find not that the budgets are going to increase and subscriptions are going to increase, but the access to information would probably be limited and will decline.

COMMISSIONER WILCOX: Then it is the end user that will either--

MRS. MATHESON: Yes. The end effect will probably be that unless, let us say, a hospital is willing to pass on the costs to the patient, that there is not going to be a great effort to expand the information resources in a hospital library

COMMISSIONER WILCOX: Thank you.

CHAIRMAN FULD: Mr. Wedgeworth.

COMMISSIONER WEDGEWORTH: Just a couple of questions. I was a bit amused by the exchange which my colleague Mr. Perle had about the two additional factors. It seems to me that cost and speed of delivery have not characterized either publisher or library action in terms of serving users. [Laughter]

To give a couple of examples, I heard a very apt statement made yesterday where a bookseller pointed out that he could not understand why, after years and years of experience, booksellers and publishers continue to ship a book from one end of the country to be returned to the publisher or bookseller if it is not sold; it may be sent out across the country a second time on the basis of a subsequent order. And the question is, What happens to those users who cannot find the item when they really want it in the library or in the bookstore and have to order it?

Another set of statistics might be the length of time that it presently takes a user to get access to an item through interlibrary loan, even if you do admit that this particular system operates in the absence of any substitute distribution system.

The point that interested me, however, is--and it was not clearly made in the testimony--is the implication of the three suggested types of services among others that might

so
 be considered/that libraries might alter their practices with respect to interlibrary loans? For example, that a certain percentage of interlibrary loans might go to different sources if equal conditions prevail with respect to the speed of delivery and the actual availability of the particular items in which the user expressed some interest?

DR. MCKENNA: Let me repeat--I think it is the second of the three items. If the publisher were to have available offprints and the librarian knew that publisher A had offprints of each of the titles, each of his serial titles, and knew that there would be a quick turn-around in response to the order, I am sure that a large number of libraries would order directly then, rather than going to another library. In fact I think I would go so far as to extrapolate that many libraries would be very happy to have that photocopying load taken away from them.

COMMISSIONER WEDGEWORTH: The other question I have is more of a concern. I was quite surprised to note a lack of response in the testimony to the issues related to the copyrights for data bases and computer software, since I am aware that libraries are major users and developers of both data bases and software. And my question is, Among those librarians with specific responsibilities in these areas is there no expression of interest in this question of copyright? And is there a possibility that there might be some submission

for the record at a later date perhaps on those questions?

DR. McKENNA: Essentially all of the efforts of this committee--efforts, conversations, discussions--have been aimed at photocopying because photocopying has been the primary concern. Obviously libraries are interested in data bases. More and more libraries are acquiring some sort of a tie-in to data bases.

DR. HOLLEY: Could I have a try at that? The committee has discussed this and not come to any real conclusion on this. Professor Marke has some decided views that go back--is it 12 years, Julius?--

DR. MARKE: Twelve years, yes.

DR. HOLLEY: --on this matter. We heard a fine report last night from an ALA member who is the editor of the Journal of Library Automation, and we can certainly submit that statement for the Commissioners. I would want to be sure that you understood that it is not the position of the Committee, but we would be happy to have it submitted for your information. None of the Associations, to my knowledge, has taken a definite position on the copyrightability of data bases and computer programs at this point. And I agree with you that this is likely to be a very serious problem. As the Commission's Subcommittee Report indicated, there are two very different views about this, about the copyrightability of material. And I do not think

that this committee at this point is prepared to deal with that.

COMMISSIONER WEDGEWORTH: Just a quick followup question. In addition to any views that Mr. Marke may want to make here before the Commission today, is there any likelihood that there may be something that would be submitted to assist in the deliberations of the Commission on those two major areas of responsibility on which the Commission has spent most of its time?

DR. MARKE: We certainly can consider this. I cannot speak for the Committee at this point. My own views on this matter--I think that really, Mr. Wedgeworth, what you say relates to what Mr. Lacy brought up before and raises a very intriguing situation. Can copyright law really respond to the new technology? Is it going to be a matter of contract route in the near future when you are dealing with data bases?

On copyrightability, the impression I have in the field is that if anyone is smart enough to figure out a program, he is not going to copyright it. He is going to keep it secret.

COMMISSIONER LACY: He is going to copyright it after January 1st because it is going to be copyrighted whether he wants it copyrighted or not.

DR. MARKE: He does not want anybody to know about

it. It will be reflected in the data base, and the data base will be something that will be very significant.

COMMISSIONER LACY: He may not publish it.

DR. MARKE: Yes, and for the publisher. No, I am not sure. I am merely--I am speculating on this. As I see it, when you are dealing with the rapid rate of obsolescence of information, as we have today, the data base will obviously be reflected as being obsolete in about a year or two, especially in the field of science and technology. It seems to me that if we get involved with copyright and duration of copyright for the lifetime of the author, 50 years, or corporate author for 75 years, we are going into areas that are not going to be that significant in the research response.

I personally think we are going to have many contractual arrangements made in the future between the institution and the creator of the data base which will permit us to make copies. Right now, for example, a very primeval approach I think^{is} when you talk about the technology but not with reference to what is being developed. LEXIS, for example, is a computerized retrieval of legal information. We get this in the library. We can make photocopies in a sense. It is not really a photocopy. It is a printout. But I can see eventually where we will be ready to get photocopies from the screen of what we are retrieving

over there. This is the hard copy itself which is in that data base by reason of the fact that the operator has arranged contractually, I suspect, with whomever he is working with to provide him with those materials under those circumstances.

COMMISSIONER WEDGEWORTH: Excuse me, Mr. Marke. I did not want to get into the full discussion. I just wanted to make the explicit request that if there was something that might be of assistance, we would appreciate it.

CHAIRMAN FULD: We would welcome a copy of the paper you refer to.

COMMISSIONER WEDGEWORTH: Just one final quick question. I was still a bit confused in the discussion on the limitations of 107. And let me be sure. My understanding of what the testimony was saying was that there were several areas of conflict of rights that were anticipated in the course of the development of the law and the legislative history and the guidelines, that you recognize there may be other areas that are not anticipated but the experience in operating with separate fair use sections and separate rights for libraries do not give us a basis of experience for really determining any explicit guidelines at this time?

DR. McKENNA: Right. They may not only be not anticipated but they may be totally unrecognized by all parties at this time.

COMMISSIONER WEDGEWORTH: Thank you.

CHAIRMAN FUND: Professor Miller.

COMMISSIONER MILLER: Just a followup on a line
[Commissioner Wedgeworth]
opened up by Bob/. I have an uneasy feeling--and it is going
to produce a vague inquiry. It is based on a perception I
have about my own library, not mine personally but my
institution's library, which has reached the point now of sort
of organized anarchy with a quarter of our collection in
what I guess our librarian euphemistically calls 'dense
storage.'" [Laughter]

I think as a practical matter it is really dead
storage or irretrievable storage. God knows! What have we
got, 2 million books?

DR. MARKE: A million, four hundred thousand.

COMMISSIONER MILLER: And I think we have about
three hundred to four hundred thousand of those books getting
wetter and wetter by the day underneath one of our dormi-
tories. The only virtue to that is there is no way they could
catch fire at this point. [Laughter]

Therefore, our library seems to be moving toward a
very expensive program of microforming.

Now, you present this very, very good testimony
this morning. But I have the feeling it is all premised on
the photomachine as we know it with relationship to a book.
I have the feeling--and this is the vague question--that there

is lurking within library movement toward microform in which they are in a real sense the generator of a data base and the generator of a microform library with some slight conversation as to potential markets for those microform libraries or interlibrary loan arrangements for those microform libraries and on-demand student and faculty copying capacity for those microform libraries, that hidden under a rock is another world that we have not yet looked at. And I wonder whether the library community has looked under that rock and has intentionally or unintentionally put the rock back.

DR. McKENNA: I think one can say that we consider the microform to be a specific variety of photocopy--that is, the blowback--

COMMISSIONER MILLER: But if I strike Xerox or Savin or the operative word from every page and substitute in microform, will I be as educated?

DR. McKENNA: If you have a reader-printer, you get back hard copy, and then I believe it is exactly the same--

COMMISSIONER MILLER: Exactly the same.

DR. McKENNA: --same situation. You will remember part of my response to Mr. Lacy about looking into the future wild mechanisms, if I may use the word "wild" but meaning intelligent, is the question of getting the individual to accept a new format in his own library. There I think will be an extension. But there would be a greater

production of blowbacks from the microforms so that the individual can have hard copy in his hand.

COMMISSIONER MILLER: My law school has six dormitories. Morris Cohen is a bright fellow. We have a big reserve collection right now in the central library. I could see Morris very easily saying, "Let us produce six remote reserve centers on microform, one in each dormitory."

MR. LORENZ: The basic problem is lack of money to do that. It is a very expensive process to put all of this material into microform.

COMMISSIONER MILLER: It is a hell of a lot more expensive for us to store books at this point.

MR. LORENZ: But that is not perceived because the space is there.

COMMISSIONER MILLER: We are not NYU with \$63 million of spaghetti money to spend on it. [Laughter]

MR. LORENZ: It takes new money. It takes new and additional money to microform, which just is not available even at the Library of Congress where materials are literally crumbling on the shelves because of the lack of funds for microfilming. And I think really lack of money for libraries is at the basis of the total problem that we are facing. Libraries would be very happy to buy more materials and provide better service if the funds were available. And I hope we can get back to the day when libraries and publishers

are working together with all of their energies to get more money into libraries. This is the situation we had from '57 to the seventies when things started turning down. Then we started working against each other rather than with each other to get more resources into the total picture. And if we can get back to that day, I think we will all be much better off, and the public will be better served.

COMMISSIONER MILLER: If my librarian had a half million dollars, he could rationally decide today it is more effective from the perspective of the educational mission of our school to create six remote reserve centers which can only be done, because of space limitations in the dormitories, with microform than to expand the one centralized reserve center we have in the central reading room of our main library.

DR. MARKE: May I respond to that because we are referring now to the law library, and I have experience in this area. You will find that practically everything that is on microform of one sort or another in the law field is in the public domain.

COMMISSIONER MILLER: Now.

DR. MARKE: We seek now both. When we start to miniaturize the library, we are not going to take the current materials and put them from hard copy and translate them or convert them into microform. What we do now, we can get

from West [Publishing Company],
really with ultrafiche now / we have got a hundred
thousand books right now in the public domain practically.
This is a great part of the bulk of the library. This
permits us to have more space in the future. I think in the
future it is a question of what the public wants to do. Let
the publishing field--I think an enterprising publisher
would be able to prepare the microform and say, "Now, here
you have got it. It will cost you a little bit more. But,
look, you can make copies, and you have the space in the
library that you are saving." I say the time has come for
the publishers to get involved in all this rather than
depend upon the librarian to give you the solution to the
problem. The publishers are still continuing with their
practices that they did the day of Gutenberg!

CHAIRMAN FULD: On that note I think we will
conclude this presentation. [Laughter]

Thank you, Dr. McKenna, ladies and gentlemen.

DR. MCKENNA: Thank you very much, Judge Fuld and
members of the Commission.

[The written statement of the Council of National
Library Associations, Inc. follows as Appendix A.]

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MR. LEVINE: May I make one brief announcement before the next speaker. We have been able to obtain Room 2226 for this afternoon's program. Room 2226 is much larger and more comfortable, and it is right around the corner to the south. To those of you familiar with the Copyright Revision Hearings, it is the room in which those Hearings were held.

CHAIRMAN FULD: Our next speaker is Dr. Eugene Garfield, founder and president of the Institute for Scientific Information, Philadelphia. ISI produces such publications as Science and Social Science Citation Indexes and the various Current Contents journals along with computerized search services such as SCISEARCH and SOCIAL SCISEARCH. Dr. Garfield will tell us about the OATS, the acronym for Original Article Tear Sheets, and authorized photocopy services which his company offers. Dr. Garfield.

STATEMENT OF DR. EUGENE GARFIELD, PRESIDENT
AND CHAIRMAN OF THE BOARD OF THE INSTITUTE
FOR SCIENTIFIC INFORMATION

DR. GARFIELD: Mr. Chairman and Commissioners: My name is Eugene Garfield. I am the president and chairman of the board of the Institute for Scientific Information, located in Philadelphia. The Institute is a multinational corporation that provides a wide variety of information services to scientists and librarians throughout the world. It has

been in existence for approximately 20 years. It employs about 400 people and is operated on a for-profit basis.

From a functional point of view, the information services we provide can be classified into the following five major groups: Current awareness, Selective dissemination of information, Retrospective search, Journal acquisitions planning, and Document fulfillment.

It is because of ISI's role in document fulfillment through our Original Article Tear Sheet Service, frequently referred to as OATS, that I have been asked to make a statement today. As requested by Mr. Frase, I will try to describe the operation of the OATS service as well as our pricing structure, our customer base, and our plans for the future.

For about 18 years we have been operating and advertising the OATS service. It was developed as a logical extension of our other services which are primarily designed to alert people to the existence of journal articles of interest. And that now, incidentally, includes book material as well. OATS was designed to supply full-text copies of those articles when such copies were not readily available from more traditional channels such as libraries or reprints from authors. Originally the use of the OATS service was limited to those who subscribed to our various information services. But for many years now, anyone has been able to

use this service. Regular ISI subscribers do have an advantage in that they are provided with the accession numbers which identify specific journal issues. If this number is not provided with an order for an article, there is a surcharge of \$1 added to the following standard prices:

U.S., Canada, and Mexico; first class delivery
or airmail; up to ten pages, \$3.50;

all other locations; airmail delivery up to ten
pages; \$4.50;

each additional ten pages or fraction; \$2.00;

and then there is a one dollar charge per article
for TELEX or telephone orders.

At the present time ISI processes over 5,000
journals representing all the disciplines of the sciences,
social sciences; and, beginning next year, we will be in the
arts and humanities.

We currently process and index more than 500,000
articles a year, about 100 articles per journal. By various
methods such as gift, exchange, or subscription, we obtain
about three copies of the average journal. One of these is
designated the master copy. The other two are used initially
for various editorial purposes, but eventually they go into
our warehouse where they are stored by accession number.
This is not a browsing library. From the two extra copies
of each journal issue we actually tear out the articles

requested through the OATS service. The master copy gives us the backup from which we photocopy articles when multiple requests for a single article use up the available tear sheets, or there may be other reasons why the second copy is not available.

Approximately 70 percent of all OATS orders are filled with tear sheets. During 1977 we expect to fill more than 110,000 OATS requests. This compares to about 100,000 for '76 and nearly 90,000 in 1975. Over 90 percent of all these orders come from residents of the United States. Less than 10 percent of all OATS orders come from individuals. Almost 70 percent of our orders come from approximately 50 organizations. Of these, over 90 percent are major corporations. The kind of responsive service that we provide and the high degree of satisfaction our customers derive are well described in the article reproduced in the attachment you should have. The article was written by the director of IBM's Technical Information Retrieval Center.

I would like to add a parenthetical note to the statement that I handed out, which is that out of 500,000 items that we index each year, I estimate about 12 percent are requested one or more times. Only one case of ten requests for the same article ever came to ISI in the entire history of the service, to my knowledge, and that was from a Chinese journal that was not very readily available and

published an article which was of very significant importance to science.

Unlike other libraries, we do not necessarily get orders for the most popular journals, since libraries use us for journals that they do not yet buy, especially in the first few years that we begin to list these journals, new journals.

Throughout the history of OATS, timeliness and convenience have been emphasized in its operation. All orders received by telephone or TELEX are filled the same day. Over 98 percent of all requests are filled within 48 hours after they are received. Although most requests are for very current articles, 90 percent less than three months old, we maintain a back-file so that the other ten percent can be delivered for as much as four years back. Convenient pre-addressed order cards that give users a record of requests made are available free of charge. We also enable the library user, through the use of deposit accounts, to avoid the high administrative costs associated with the preparation of purchase orders and payment of invoices. Additionally, pre-payment for OATS orders can be achieved through the purchase of ISI stamps that can be sent in with individual orders.

I think you have a copy of the order card and a picture of the stamps in Attachment B.

From its start, the OATS service has paid a royalty

to journal publishers with whom we have negotiated agreements of one kind or another. Currently the payment is 60 cents per article or 20 percent of the OATS fees collected, whichever is larger. That is on a ten-page article. On a 20-page article we would be paying them \$1. A key point to note, however, is that the royalty in most cases is not just paid on orders filled by photocopies; it is also paid on those filled by tear sheets. Technically, when we supply a tear sheet for an article, it is not subject to copyright provisions. Unless specifically prohibited by the publisher in the terms of sale, we believe anyone has the right to sell a portion of an original journal or book.

Royalties are paid to publishers annually and are based on computerized records that can be examined upon request. Provided with each check is a summary of the number of articles filled from each of the publisher's journals. At ISI we have working records that are more detailed and could show how many requests were received for a specific article. The typical royalty agreement for publishers who participate in OATS is also provided in your attachment, Attachment C.

ISI has persisted in operating its OATS service in the face of some publishers' earlier concern that it may be depriving them of subscription revenue. I might add there that they also know we have over 300,000 readers who order

over ten million reprints per year through authors who pay usually for these reprints. And, to give you an indication of that, we ourselves sell over a million so-called request-a-print cards that are used by our readers just to order reprints from authors.

Basically we provide the OATS service because we want our subscribers to information services to know that when traditional channels fail them, they can promptly obtain the article they want from us. I believe that even if a subscriber comes to ISI for an article just once a year, he or she must be serviced without a delay of weeks. I could give some very dramatic examples of frustrated readers who we have been able to help. In one case a man who subsequently got the Nobel Prize called me and asked to have an article read to him over the phone, which I did in German.

We have also persisted with OATS because we feel it proves that we can and will protect authors' or publishers' rights.

The 60 cents per article minimum royalty I mentioned earlier is about double what we used to pay since we originally paid ten percent on a lower price when we started out. I think our service was \$1.50 or \$2 an article. And we are prepared to go higher if publishers insist on it. It is their privilege. ISI supports the basic principle of copyright protection. We regret that this may cause ill will

with some librarians who are our good customers. On the other hand, if publishers insist on exorbitant royalty fees--one publisher expects to receive \$7.50 per article--I think they will limit the effectiveness of voluntary arrangements such as the one set up by the Association of American Publishers. What they will get instead will be a compulsory licensing system similar to the one that exists for music. Under such an arrangement, publishers will be likely to receive less compensation per page, not more.

In the future we expect our OATS service to expand as libraries appreciate the true costs of providing inter-library loans and accept the idea of a payment to publishers, whether through the Copyright Clearance Center or through ISI or elsewhere. Some firms may choose to use in-house copying facilities rather than ISI, in which case we would lose some of their business. This may be more expensive for them, but it may be required by the urgent--or the word "expedient" was the term before--needs of research. We support the idea of the Copyright Clearance Center and any other cost effective means for facilitating research without depriving the copyright holder of reasonable compensation.

I think that I will say that much, and I will be glad to answer any questions you have.

[Written statement and Attachments A, B, and C follow as Appendix B.]

CHAIRMAN FULD: Thank you, sir.

Yes, Bob.

MR. FRASE: You mentioned that you are going to expand your journal collection into the field of the humanities. How much of an expansion would this be in terms of journal titles?

DR. GARFIELD: Approximately 1,000, I would say. We already cover some humanities journals in our social science notes.

MR. FRASE: Is there any possibility that you might extend your backlog beyond four years for the service?

DR. GARFIELD: There is always a possibility, but there would have to be some practical reason for doing so.

MR. FRASE: Lastly, I understand from a progress report that we just had from NTIS that you are going to be one of their suppliers.

DR. GARFIELD: That is correct. We already are doing it.

MR. FRASE: And this is on ^{the NTIS} / standard 50-cent royalty basis?

DR. GARFIELD: No, no. We will have the same arrangement as we have for everyone else. NTIS will pay us a fee for the service we provide them, and we will provide our usual royalty to the publisher.

MR. FRASE: So, they will pay you a flat price?

DR. GARFIELD: Probably.

MR. FRASE: And you will do the delivery.

DR. GARFIELD: That is right.

CHAIRMAN FULD: Yes, Mrs. Karnatkin.

COMMISSIONER KARPATKIN: You have negotiated agreements with all 5,000 journal publishers?

DR. GARFIELD: It depends on what you mean by negotiated agreement. We have a large variety of agreements. There are a lot of publishers that do not publish copyrighted material.

COMMISSIONER KARPATKIN: You refer on page 4 to paying a royalty to journal publishers with whom you have negotiated agreements.

DR. GARFIELD: That is right.

COMMISSIONER KARPATKIN: Is that the entire 5,000?

DR. GARFIELD: No.

COMMISSIONER KARPATKIN: What percentage of that is it?

DR. GARFIELD: I would say that by signed--when we talk about agreements, we have agreements with a lot of publishers which do not involve payment of the 60-cent royalty that I mentioned to you because they prefer it that way, all right? There are a lot of publishers who do not want to receive these royalties from us for a variety of reasons that I could go into.

COMMISSIONER KARPATKIN: They receive nothing?

DR. GARFIELD: That is right. They receive the service that we provide to them as we advertise in the journals. So, they are perfectly willing to have the service provided. The number of tear sheets that we provide from some of these journals is so small as to make it a ridiculous accounting transaction. There are other publishers who do not want to have to divide up the royalties they would get for authors, okay? So, rather than do that, they would prefer to get nothing.

There are foreign governments who publish journals that we do not have agreements with, including the Russians. We may negotiate with them some future arrangement.

COMMISSIONER KARPATKIN: Do you know what percentage of your 5,000 you have negotiated agreements with?

DR. GARFIELD: I would say about 35 percent at least. And these, however, account for probably 75 percent of the articles we index.

COMMISSIONER KARPATKIN: But you receive compensation for 100 percent of what you transfer?

DR. GARFIELD: Yes, we charge for every tear sheet.

COMMISSIONER KARPATKIN: Why do you pay royalties on--

DR. GARFIELD: Excuse me. Remember we also buy journals.

COMMISSIONER KARPATKIN: All right. Why do you pay

royalties on tear sheets?

DR. GARFIELD: Why?

COMMISSIONER KARPATKIN: Yes, if you are not obligated to under the law.

DR. GARFIELD: Because we set it up originally as a way of telling the publisher that it would be cheaper in the long run for the whole operation for them to send us the journals rather than for us to always provide photocopies. And we would then not have to separate records for photocopies and tear sheets. We would provide the user with a better product. Since one is a substitute for the other, we do not feel that the publishers should be deprived of that additional revenue because we are fundamentally in a business of indexing, not in the business of providing a library service. So, we have a real interest in maintaining good relations with publishers.

COMMISSIONER KARPATKIN: Are all of the publishers to whom you do not pay a royalty acquiescent in that arrangement?

DR. GARFIELD: Yes, I would say so. Anybody that-- we index their journals. It is public knowledge. We advertise it, and every one of them knows about it. Any publisher who would claim that he is not receiving any royalties from us would be offered the agreement immediately. And if he refused it, he would possibly discontinue sending

his journals.

CHAIRMAN FULD: Mrs. Wilcox.

COMMISSIONER WILCOX: To pursue that a little bit further, am I correct--you say you collect royalties on 100 percent of your orders?

DR. GARFIELD: We do not collect royalties; we pay royalties.

COMMISSIONER KARPATKIN: They collect a fee.

COMMISSIONER WILCOX: You collect a fee.

DR. GARFIELD: We collect a fee for everything.

COMMISSIONER WILCOX: But you say you only pay it to those who want it because some do not want it.

DR. GARFIELD: That is right.

COMMISSIONER WILCOX: You say you have negotiations with about 35 percent, but some of those negotiations include a statement that they do not want to receive anything.

DR. GARFIELD: No, I did not include that in the 35%. Those that I said are included in that would be signed agreements; every one of those journals is a signed agreement.

COMMISSIONER WILCOX: It is a signed agreement saying they want to receive something?

DR. GARFIELD: You have seen a copy of the typical agreement. They are not all exactly the same.

COMMISSIONER WILCOX: My question really is--that

would seem to indicate that your experience substantiates the Fry study that a lot of publishers do not want to bother with--

DR. GARFIELD: Yes, because, you see, you are dealing in a peculiar numbers game. It is a business where a small percentage of the publishers produce a large percentage of material. If you are covering a journal that produces three articles a year, does it pay to negotiate a contract with that publisher to send him a 60-cent check? So, he is not concerned and we are not concerned. If there was any significant quantity involved, we would be the first ones to tell them about it.

COMMISSIONER WILCOX: Next--well, that is okay.

CHAIRMAN FULD: Mr. Lacy.

COMMISSIONER LACY: You spoke, Mr. Garfield, of the fact that about 90 percent of your orders came, as I recall-- that is not literally true, but from large corporations. I would assume this means you get very few orders relatively from university libraries or public research libraries.

DR. GARFIELD: No. I said of the 50 leading accounts--

COMMISSIONER LACY: Yes.

DR. GARFIELD: --they are mainly corporations.

COMMISSIONER LACY: But those 50 leading--I got the impression from putting those two figures together that

the overwhelming bulk of your actual business was in the large corporate libraries.

DR. GARFIELD: A very significant percentage of it.

COMMISSIONER LACY: What percentage, do you have any rough idea, comes from university libraries or public libraries, larger public libraries?

DR. GARFIELD: I would say about 25 percent, 20 percent of all that come.

COMMISSIONER LACY: What is your feeling for the reason why the service is so much more actively patronized by corporate libraries? Are they more insistent on getting material fast, or that you market to them more vigorously than market to public and university?

DR. GARFIELD: I think there are several reasons. One, they are much more concerned about timeliness. Secondly, I think in general the corporate atmosphere, they are interested in a more cost effective delivery of service. I wrote a rather humorous piece about the topic of the cost of interlibrary loans, and I think that not until recently have university librarians been willing to face up to the true costs of these interlibrary loans.

So, you have the situation where in general a local library would prefer to use its own facility or the facilities of the established university interlibrary loan network rather than go to a for-profit organization even though

¹ Garfield, E., Don't try to explain interlibrary loan to your university president. Current Contents No. 25, 21 June 1976, p. 5-8.

the cost is lower.

COMMISSIONER LACY: You have been relatively flat in terms of total volume the last two or three years, I take it--going up.

DR. GARFIELD: Well, ten thousand. It has increased ten percent a year.

COMMISSIONER LACY: Yes. There would be a quite large market if university libraries responded in the same ways that corporate libraries have. Have you planned any promotional effort to approach that market vigorously?

DR. GARFIELD: We advertise the OATS service in every issue of Current Contents and all our other services. I would not say that we plan to hit the university libraries very aggressively. They will come around to it themselves. I do not think it would make that much difference.

COMMISSIONER LACY: One of the problems of course is how large a universe can be served. I would suppose that a really large university library would itself have a very high proportion of the 5,000 journals you are covering, and their problems are likely to relate to an outer perimeter of another twenty-five or thirty thousand journals that neither you nor they might have. Would it be economically feasible--

DR. GARFIELD: I do not happen to agree with that thesis, but the fact is that in the university that gets 5,000 journals it can frequently be one of the hardest places

to find a recent issue. I teach at a university, and I know what I am talking about.

COMMISSIONER LACY: I will let that one go by.

DR. GARFIELD: You go into the library and try to get the copy of a two or three month old journal.

COMMISSIONER LACY: What I really had in mind is the feeling that in the Palmour study on the National Periodical System there was suggested a need for a service that could cover something beyond the most frequently used two or three or four thousand journals and yet within a ceiling of, say, 40,000 journals. And it was assumed that this would have to be provided with public funding as a service probably of the Library of Congress. Do you see a possibility of an enterprise like yours or any of your competitors entering that field--that is, broadening the range of journals that you are serving, becoming a broader resource?

DR. GARFIELD: We are broadening it, but I cannot see our broadening it to include 40,000 journals unless people are willing or educated to pay the real cost of providing such a service. When such a center, if it is set up--it will be subsidized by somebody who is willing to pay indirectly for the real cost.

COMMISSIONER LACY: What would the real cost have to be, would you guess --assuming obviously that you are going to have to carry subscriptions to thousands of journals

or at least holdings of thousands of journals that may not be used at all in any given year or may be only one use or two, and that one or two uses has got to cover the presence of that journal in the center. Are we talking about \$10 now? I mean, whether you do or anybody does it. I am talking about the cost, not your cost.

DR. GARFIELD: I suspect it is way in excess of \$10.

COMMISSIONER LACY: Like twenty or thirty or forty, fifty.

DR. GARFIELD: Maybe. It depends on how far you go with your numbers. I mean, if you want to go to 40,000 or 50,000. I suppose you could draw some conclusions from what it costs to operate the British Library Service.

CHAIRMAN FULD: Mr. Wedgeworth.

COMMISSIONER WEDGEWORTH: Just one question for Dr. Garfield. Dr. Garfield, we are aware that you personally and your organization are responsible for a substantial amount of research on user demand for journal literature. I would just like your opinion, based on your experience at ISI as to the appropriateness of the five-year protection established by the CONTU guidelines with respect to journal literature. Do you think that that period is appropriate, too short, too long, based on your experiences in supplying journal articles through your OATS service?

DR. GARFIELD: It varies very considerably from field to field. I think if you were talking about molecular biology, things are passé within a year. If you are talking about descriptive botany, literature is important for 50 or more years. I mean, if you wanted me to average it out, I would say maybe five years is reasonable, but I would answer it in terms of individual fields.

COMMISSIONER WEDGEWORTH: I was getting your sense of whether that was a reasonable optimum figure or whether it was way out of line, in your experience.

DR. GARFIELD: I indicated we only keep material for four years. Now, that may be because there is a heavy bias towards industrial users of our collection. But if you were to look at citation data today, I think you would find ten years certainly would cover a very large percentage of all the uses.

COMMISSIONER WEDGEWORTH: But you keep it for only four years?

DR. GARFIELD: We stock it; yes, that is right.

CHAIRMAN FULD: Professor Miller.

COMMISSIONER MILLER: Do you keep it for only four years out of use considerations or space considerations or both?

DR. GARFIELD: Primarily space, which costs us money. We have limited space.

COMMISSIONER MILLER: So, it is conceivable that if

you had it on a microform basis, you might keep it longer?

DR. GARFIELD: Yes, assuming that the cost of microform and everything associated with it were cheap or equally expensive.

COMMISSIONER MILLER: Actually a different question. You may have no reason to know this. Of the 35 percent of your users or thereabouts with whom you quesstimate you have got negotiated payment agreement--

DR. GARFIELD: Publishers.

COMMISSIONER MILLER: Yes--what is your guess as to how many of those people pass those royalties in whole or in part back to their authors?

DR. GARFIELD: A small number.

COMMISSIONER MILLER: A small number.

DR. GARFIELD: But I do not know.

COMMISSIONER MILLER: You do not know whether a small number is ten percent or--

DR. GARFIELD: Yes, I do not know. I mean, certainly less than 50 percent.

I might add--what Mrs. Wilcox was talking to before--there are large publishers who in the past have refused to negotiate agreements with us, not because they thought what we were doing was wrong but because they did not want to receive the money for the very reason you are giving.

COMMISSIONER MILLER: They do not want to receive

the money because of the transaction cost of passing it back to their authors.

DR. GARFIELD: Ultimately.

COMMISSIONER MILLER: But let us take some of these people you have agreements with, you are paying them money, and they are not passing it back to their authors. Is it your guess that they are not doing that because of the transaction cost involved, or they are not doing it because it is better to receive than to give? [Laughter]

DR. GARFIELD: No. No. I think it is because in those cases they have assigned copyrights. In other words, these journals that are published, the authors have assigned to these publishers those rights, and therefore these authors do not expect to receive compensation. And in the practical situation the average author would receive a minute amount of money from the average scientific journal.

COMMISSIONER MILLER: Which leads naturally to my last question. What do you guess will be the effect of 201(c) of the new statute which preserves to the author, you know, in more express form the right to withhold reprint rights? What will that do to those publishers and what will it do to your service?

DR. GARFIELD: I do not think it will affect the kind of thing we are doing because while I have urged libraries to support copyright because of the ultimate

author--out of all the thousands of authors who publish articles that we supply, only a small percentage of them will publish, incidentally, primarily books on which there will be concern about copyright protection. In the case of the average article that the average author publishes, he is not terribly concerned there about that particular copyright protection. But he is concerned about copyright protection in general. And I see no way of preserving copyright for authors all the way down the line without preserving it at the individual article level. What he chooses to do about the particular article he published in the Journal of Experimental Botany, for which there were six requests last year, is not particularly important, but the general principle is.

COMMISSIONER MILLER: But if he is publishing in Scientific American or a major law review or a humanities review for which there may be 10,000 requests, it is hard for me to believe--

DR. GARFIELD: He has no problem in that case because in the case of Scientific American he is paid by them for the article. It is a bad choice. Any journal that pays the author for his writing, he is in fairly good shape.

COMMISSIONER MILLER: But under 201(c) that payment by Scientific American will not cover the reprint rights unless they are expressly included in that contract. Up to

now, Scientific American, which--forgive me, Gene, is a good choice from my perspective because I know the organization, not as an author but--

DR. GARFIELD: I meant in the sense of a typical scientific article. It is not a typical scientific journal, the journals we are dealing with. We supply a very small number of tear sheets.

COMMISSIONER MILLER: What I am probing at I think is your statement that the individual author is not concerned about copyright. I wonder--

DR. GARFIELD: No, I did not say that. I said he is concerned.

COMMISSIONER MILLER: He is/^{not} concerned about the copyright with regard to reprints, which you characterize as six copies a year, of his article in Experimental Botany or whatever example. Is it lack of concern or lack of information? That is, his assumption has always been, when I write for this journal it is their article. And now he is going to be told under 201(c), "It is your article, author. Unless they put the hammerlock on you, you retain the reprint rights."

DR. GARFIELD: That has never been true before. I and many other author's --when I submit an article for publication, I have always retained the right to republish. There is an example of it right now.

COMMISSIONER MILLER: That is why you are a businessman and the others are academics. [Laughter]

All I am suggesting is that there may be a change in mentality on the part of even the academics.

DR. GARFIELD: Hopefully. We have to educate some people.

COMMISSIONER MILLER: And you do not see that that is going to impact you?

DR. GARFIELD: No. I do not feel it is any problem because I think that the average scientific author has a good relationship with a scientific publisher. They do not see them as boogeymen.

CHAIRMAN FULD: Mrs. Karpatkin.

COMMISSIONER KARPATKIN: Did I understand you to say that you would be moving into the area of the humanities--

DR. GARFIELD: Yes.

COMMISSIONER KARPATKIN: --and expect to have about what, a thousand journals? Do you anticipate any differences in the percentages that you have described as far as the number of negotiated agreements and the extent to which you make payments, or the interest of the authors in receiving royalties--any difference as between the humanities journals and scientific journals?

DR. GARFIELD: I think the difference would be the tendency for more mail to be ignored [laughter]. As the

journal gets more scholarly, ephemeral, they tend to be really less uptight, but we have exceptions. I can think of a few examples of journals that were both non-profit, scholarly, not large circulation, but they were the most violent people when it came to the copyright issue. I thought they would be the first ones to say, "We do not care about photocopies." But they were the loudest and most outspoken of people, and they demanded to have some kind of agreement from the outset.

COMMISSIONER KARPATKIN: The they being who?

DR. GARFIELD: Do you want me to give you specific examples?

COMMISSIONER KARPATKIN: No. The class of people.

DR. GARFIELD: The small journal that is a non-profit publication.

COMMISSIONER KARPATKIN: Publisher. The small journal publisher.

DR. GARFIELD: Yes, right.

COMMISSIONER KARPATKIN: Do you perceive a difference in the interests of the author for a humanities journal as compared to the interests of an author or writer for a scientific journal?

DR. GARFIELD: I think the difference lies in the animal because the average humanities article writer more often writes books and is more sensitive to this question

of royalties, whereas the average scientist in the course of his life never writes a book.

COMMISSIONER KARPATKIN: That describes the emotional difference. How about a financial difference-- difference in their financial stake in any of the transactions?

DR. GARFIELD: I guess to the extent that a humanities scholar depends on royalties for any additional income, he is going to be more sensitive to it. To the extent that he is not, I do not see any major difference.

VICE CHAIRMAN NIMMER: As I understood it, you deal with the publishers, not with the authors; is that right?

DR. GARFIELD: We deal with the publishers.

VICE CHAIRMAN NIMMER: So, you do not really have any insight as to the authors.

DR. GARFIELD: We do have a very large number of readers who are authors. Most of our readers, users, are in fact authors.

CHAIRMAN FULD: Mrs. Wilcox.

COMMISSIONER WILCOX: Mr. Garfield, I wonder if you could tell us what percentage of your orders are for multiple copies of an article.

DR. GARFIELD: I tried to give you an indication of that before when I told you distributions and that in the entire history of the service we have not supplied more than

ten copies of the same article.

COMMISSIONER WILCOX: Then my question would be, From your knowledge of the research community, both in the corporate world and in the academia, do you have any idea how often those reprints, those tear sheets that you provide, are then recopied?

DR. GARFIELD: I have not the slightest idea. We will not make more than one copy for a customer. That is for sure.

COMMISSIONER WILCOX: In other words, you have no idea how many times they are recopied after they go out.

DR. GARFIELD: No.

COMMISSIONER WILCOX: Then you are in a sense in the same kind of situation that frequently a library is in.

DR. GARFIELD: I will say this though, that since most of our customers are industrial organizations and since a large number of them use the service partly because they know payment is being made to the publisher, they are not likely to be copyright violators because they are very sensitive to suit on this issue. So, it is a vicious circle. They are coming to us partly because they feel they are off the hook. Why should they then turn around and take the articles they have bought from us, paid a royalty on, and use that as a way of avoiding a payment?

COMMISSIONER WILCOX: I am baffled then because

of the way that scientists tend or researchers tend to want their own copy. It seems to me that either you would be getting a higher percentage of multiple copies or many orders for the same copy if a corporation did not have their own subscription.

DR. GARFIELD: Why do you assume that?

COMMISSIONER WILCOX: Because--

DR. GARFIELD: That is a fallacious assumption. The average article in the literature is probably read by 20 people. A study has been done on that. So--

COMMISSIONER WILCOX: Sure, the average, but the concentration--

DR. GARFIELD: All right, so I gave you some idea. We deal with a half a million articles a year. We supply one or more copies for approximately 12 percent. From that how many do we supply to? All right. So, we are taking all the different possible users that we have. The need for multiple copies is not that great.

There is a situation when an article comes up that is of major concern to a particular company. Let us say a drug company needs that article for a mass mailing. They are going to negotiate with the publisher for the rights to reprint that article. They do not come to us.

CHAIRMAN FULD: Any other questions? We will recess until 1:45 in room 2226.

[A luncheon recess was taken at 12:25 p.m.]

AFTERNOON SESSION - 1:45 o'clock

CHAIRMAN FULD: May I have the record show, please, that we have received from Dean Holley the statement of Susan K. Martin to the National Commission on New Technological Uses of Copyrighted Works on Reports of CONTU Software Subcommittee and CONTU Data Base Subcommittee, based on conversations with the private and public sectors of the data base community. That will be part of the record.

[Written statement of Susan K. Martin follows.]

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Statement of
Susan K. Martin
to
National Commission on New Technological Uses of Copyrighted Works
on
Reports of
CONTU Software Subcommittee
and
CONTU Data Base Subcommittee
October 21, 1977

My name is Susan K. Martin. I am a member of the American Library Association and editor of the Journal of Library Automation, the official publication of ALA's Information Science and Automation Division. My present position is Head of the Library Systems Office of the University of California at Berkeley.

The reports of the Software Subcommittee and the Data Base Subcommittee of CONTU have both advocated the position that the new copyright law effective January 1, 1978, is sufficient and adequate protection for creators and proprietors of machine-readable data bases and software. This paper is intended to show that the CONTU subcommittees' conclusion may not be the best answer for protection of works of this nature. In this country, copyright as a legal mechanism is two hundred or more years old. Obviously, copyright received tremendous impetus from the invention of printing, giving rise to the possibility of copying of literary works by unauthorized parties. Society and science are dynamic, however, and it is my contention that traditional copyright no longer can perform for us the functions that it was originally intended to perform.

Within the last two decades we have run into increasing difficulties with the advent of photocopying machines, and in coming decades I envision additional problems with the use of copyright as applied to machine-readable data, data bases, telecommunications, lasers, and other technological innovations which we cannot yet envision. For this reason, I feel that while we may use traditional copyright mechanisms as an interim protection, it will indeed be necessary to formulate an entirely

new and different device for protection of information-bearing works, basing them on our knowledge of present technology and our educated guesses about future technology.

Most librarians, when asked, will claim to have little or no knowledge of the use of copyright as applied to machine-readable data. This attitude is understandable. The topic is vast and complex. Discussed below are only a few of the many issues which arise when debating the significance of copyright as applied to these types of data.

Machine-readable data, whether they be data bases or programs, are extremely volatile. In commercially vended data bases, this volatility may appear as updates to the data base which can be released as frequently as daily, or as seldom as semi-annually, or annually. In privately owned data bases, the files are updated at the owner's convenience. This means, in effect, that we have rapidly changing "editions" of the work, and no single edition is distributed in very many copies. The analogy with the printed work is a strained one, and intentionally so. It may be unreasonable to force onto these rapidly changing and volatile data bases and programs the same kind of mold that we have imposed upon literary products.

Data volatility also implies that the user of the data base, given a computer and sufficiently expert programmers, can change the data or rearrange the data to suit his or her will. Indeed, the major distributors of machine-readable reference data bases, such as System Development Corporation and Lockheed, must of necessity rearrange and repackage the data bases as they are received from the data base producers in order to present to their customers a logical, orderly and efficient system for use. Does this mean that the data bases are the same as or different than the data bases as released by the producer? Since the information retrieved is the same, we would undoubtedly agree that the data have not changed from the producer's format to the distributor's format; however, in some data bases, the distributor or secondary user may add local information to the data in the data base. At that point, is the data base still the same data base or not?

It is necessary to make a distinction between commercial and non-commercial data bases and programs. In the final analysis, this distinction may resemble closely the distinction between trade publishers and not-for-profit publishers in the area of copyright. However, it must be clearly recognized that data bases and programs fall into both categories. Just as owners of commercial data bases are likely to demand a specific return on their investment, owners of non-commercial data bases may be almost as likely to request some form of payment for the data base or the program, as the case may be. The costs of creating a data base or writing a program are not inconsiderable, and cost recovery in not-for-profit institutions is a fairly common phenomenon.

Existing practices must be examined carefully also. Owners of data bases, because of lack of copyright protection, are now licensing these data bases to distributors or other users of the data base. This arrangement apparently has been working very well. The Chemical Abstracts Service, for instance, has been engaging in licensing arrangements with other users for the last twelve years with little or no difficulty. I have been told by a staff member of Chemical Abstracts that they sign several hundred licensing agreements annually. Two examples of non-commercial data bases are those held by the Ohio College Library Center (OCLC) and the University of Toronto Library Automated System. The Ohio College Library Center has always claimed that it was the proprietor of the data base and while each library was free to use the records that it input, only the Ohio College Library Center was free to distribute or manipulate the data base as a whole. The University of Toronto is taking the exact opposite tack. It considers itself a custodian of the data and has created a situation whereby it cannot manipulate or distribute any of the records in the data base without first consulting with the members of the system. At the University of California the 800,000-record University of California Union Catalog Supplement has been licensed for several years to Blackwell North America. This licensing agreement has worked smoothly and with benefit to both the proprietor and the user of the data.

Related problems are the problem of user-modified data and the question of protection of single records versus an entire data base. At the moment, with commercially supplied bibliographic data bases, records are not modified and the question does not arise. With the technical processing systems, such as OCLC the University of Toronto Library Automated System and Bibliographic Automation of Large Library Operations Using a Time Sharing System (BALLOTS), records originally part of the system may be modified by the member libraries, and records input by member libraries may be modified by other libraries to create new records. In the University of Toronto system, a library using the record input by an earlier library pays a royalty fee which is passed through the University of Toronto accounting system to the original inputting library. With the OCLC system, user libraries receive the benefit of a lower price if they input original data. A second library using a first library's data must pay more, but this additional payment does not accrue to the interest of the first library.

In my view, it is quite possible that within the next ten or twenty years we will encounter a situation wherein the so-called technical processing systems such as OCLC and BALLOTS, will be able to communicate with the systems now structured by companies such as SDC and Lockheed with the potential for adding local holdings information and other modifying data to the records held by SDC and Lockheed. Here again the question arises: once the data have been modified, to whom does the record belong? A corollary of this question is the protection of the single record versus the protection of the entire data base. In my conversations with people involved in commercial data bases, I found that some regarded entire data bases as being protected while others felt that it was necessary to protect at the single-record level. There appears to be no consistent point of view in this area.

While it is relatively easy to control the behavior of the data base owner and the user, the behavior of a third party user becomes a considerable problem, especially with today's burgeoning technology. Third party users are already a

problem in photocopying and xeroxing material from copyrighted books and hard-copy publications. Third party users can offer similar or more severe problems in the area of machine-readable data. For instance, at the moment, third party users of data base services use either a printer-terminal or a cathode-ray tube terminal to communicate with the data base service and receive output. However, instead of a terminal a user may connect to the end of the telephone line a small minicomputer which might have a tape drive attached to it. In this way, the third party user could receive the desired information from the data base on a cathode-ray tube, examine it, and give the minicomputer instructions to write the data onto magnetic tape for further manipulation. This function is relatively simple and may be considered to be an innocent act because a user of the analogous hard-copy indexes would be copying down exactly the same information by hand. The resultant product would be the same.

Software presents a slightly different problem. As recognized by the Software Subcommittee, together with the response by Mr. Hersey, although a software package may be a data base in itself, it does not perform the same function as a data base from which one derives information. As Mr. Hersey aptly put it, a computer program contains instructions which are at first human-readable, then machine-readable, and then it acts upon those instructions and upon data which it is fed. I join Mr. Hersey in his dissenting vote on the copyrightability of software, but for slightly different reasons. The type of software which is most likely to be copyrighted, or in other words, which is most likely to require protection, is software which has been designed for a specific application or market, to form part of a system package, and to provide a profit for its owner. In most cases, the important thing about software is the nature of the input and the nature of the results of the software performance. The software is a package or a "black box" with which the user doesn't have to be familiar. An expert programmer, on the other hand, could examine the input and the output, and without copying the exact instructions of the software could duplicate the performance of the software in question.

The subcommittee's distinction of copyright, patent, and trade secret was very useful. It is my opinion that because of the particular function of software together with the normal nature of its protection, software should be given a category of a licensable or patentable product rather than copyrightable material.

In conclusion, it is my feeling that copyright of machine-readable data is a question fraught with complexities. Perhaps the most telling point is the stress placed on the value of copyright in protection of the author as the creator of the work. With data bases and software, the proprietor or creator is usually an organization rather than an individual, and the users are usually represented by an organization rather than using expensive computer resources on their own, as individuals. Therefore, the analogy between the book and the data base begins to fade. Mechanisms such as licensing and other contractual arrangements are standard agreements between two institutions; these arrangements may be short- or long-term, as the parties see fit, and may be adjusted to cope with advancing technology. We should look to these mechanisms, as opposed to copyright, to provide protection for machine-readable data.

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CHAIRMAN FULD: Mr. Irwin Karp, counsel for the Authors' League of America and its two affiliate organizations, the Authors' Guild and the Dramatists' Guild, appeared before us in January, 1977. Mr. Karp will today present recommendations on photocopying on behalf of the Authors' League.

FROM AUDIENCE: He is here. He will be right back.

CHAIRMAN FULD: We will take a moment of silence.

[Laughter]

[At this point Mr. Karp entered the meeting room.]

CHAIRMAN FULD: You are just on time. You have already been introduced, Mr. Karp.

MR. KARP: I am sorry to be a little--to be on time.

[Laughter]

CHAIRMAN FULD: We will welcome any further remarks you have. [Laughter]

MR. KARP: Thank you.

STATEMENT OF IRWIN KARP, ESQ., ON BEHALF

OF THE AUTHORS' LEAGUE OF AMERICA

MR. KARP: Mr. Chairman and members of the Commission: The Authors' League appreciates this opportunity to appear before you here today to present its views on photocopying. My comments are addressed to two aspects of the problem both of which are discussed in the recent Senate Report on the CONTU Extension Bill, which the Chairman read

at the opening of the session.

The first deals with the work of assisting the representatives of authors, book and periodical publishers and other copyright owners and the library community in formulating photocopying guidelines to assist library patrons and employees. I am reading to you from the original Senate Report which is quoted in the recent^{Senate}/Extension Bill Report.

You may recall that last January the Authors League asked the Commission whether it intended to assist the various interests in their formulation of these additional guidelines. We outlined at that time subjects for consideration, the first of which was the open aspect of the inter-library guideline dealing with aggregate quantities for articles more than five years old. Those were left open in the guidelines, and that was noted in your statement.

Secondly, we pointed out that guidelines had not yet been formulated with respect to in-house copying, systematic reproduction of single or multiple copies of journal articles and other Section 108(d) materials by a library to its own patrons, and any other systematic reproduction and distribution that did not constitute interlibrary arrangements.

The importance of guidelines for in-house library copying is indicated by the King Report, which estimates that

some 21,720,000 photocopy items of copyrighted periodicals are made by in-house library copying. I may be off a couple of million here or there. In one or two places I think I may have--overwhelmed by the magnitude of these figures--may have picked the total rather than the copyright item, but it is very substantial.

Systematic in-house reproduction and distribution is of course prohibited by Section 108(g)(2), the 1976 Copyright Act, and constitutes infringement. The rather amusing concept voiced this morning that a library can copy anything that a user hands it because anything the user copies is fair use is not something I propose to address myself to at length in this statement. I had not even thought that anybody would make that kind of claim this late in the game. I will be glad to answer questions, although Mr. Lieb, appearing behind me, will also address himself to that briefly now, if you are interested, although I would suggest that we probably ought to cover it in the statement which we would like to submit and which we would make available to you shortly.

Getting back to the realities of the United States Copyright Act as enacted by Congress, rather than as interpreted by Messrs. Marke, McKenna, et al--systematic in-house reproduction and distribution is prohibited by Section 108-(g)(2) and constitutes infringement. Track back, if you will,

to Section 108(d) which governs library reproduction and distribution of articles and contributions made from the collection of the library to which the user makes his application--that is, in-house copying--and also governs that copying made from the collection of another library; that is, interlibrary copy. The section applies to both: That is, where the library gets its authority in-house or interlibrary to make single copies of journal articles and related materials. And that authority is limited by Section 108(q)(2) which prohibits systematic reproduction and distribution of single or multiple copies of material described in Subsection (d)--that is, in-house systematic and interlibrary systematic.

The interlibrary proviso added to (q)(2) did not in any way change the prohibition on systematic in-house copying. Discussion and illustrations in the Senate report at page 70 simply reinforce the plain meaning of Sections 108(d) and (q)(2) that systematic in-house copying cannot be conducted by a library without authorization of a copyright owner.

The one set of guidelines thus far formulated have no bearing on in-house library copying. The existing guideline deals only with interlibrary arrangements under the proviso added to 108(q)(2), and that in turn only deals with the copying of articles no more than five years old and to all copying of other contributions to periodicals and

collections, whether or not five years old.

Moreover, CONTU could not have drawn a guideline that amended 108(d) or 108(g)(2) to eliminate the protection of authors and publishers against systematic in-house copying, nor could it have done so by formulating the guideline it did and omitting that, assuming that even if it did it intentionally, it is not within your power to amend the provisions of the act; and I do not think the Commission intended to do that in any event.

And, as the Senate and House Conference Committee Reports indicate very clearly, all that they understood you were doing when you handed them the one set of guidelines was drawing guidelines dealing with the proviso and interlibrary copying. I refer you to the Committee Report.

Also we pointed out in our January testimony that guidelines could be formulated for 108(g)(1) which deals with library reproduction and distribution under all of the operative sections as distinguished from (g)(2), which deals only with 108(d). And (g)(1), as you will recall, prohibits related and concerted reproduction or distribution of multiple copies of the same material, whether made at one time or over a period of time.

The other guidelines that we touched on in our suggestions to the Commission included those dealing with the various provisions of Section 108(e) and 108(c), which

govern reproduction of single copies to replace damaged works or to provide single copies of out-of-print works.

The Commission subsequently advised us that it did not contemplate any further assistance to the parties in bringing them together to work on these guidelines. Then in May of 1977 the Commission did write to the interested organizations, suggesting that it would make its good offices available again for that purpose. Some of us responded affirmatively; others responded negatively. I assume some did not respond at all.

The Authors' League is still prepared to work with other interested groups at this time or in the future to formulate guidelines. However, since we have heard nothing from the Commission, we would assume that it has decided not to take any further steps to bring the parties together.

One further comment that we do have on guidelines-- and that deals partly with the suggestion by the staff that we make recommendations as to what the Commission should recommend to Congress. In its July 12th letter to CONTU, the American Association of University Professors indicated the view that CONTU should not be part of the process of formulating guidelines in any event, and that that process should be left to groups of interested parties. Now, with that we do agree. We do not agree with very much else the Association has had to say about copyright revision, but we are in accord

with them on that because it is not the function of the Commission to formulate guidelines. The enabling statute did not give us that power. The Senate Judiciary Report on the Revision Bill did not suggest that CONTU perform that function. On the contrary, the Senate Judiciary Committee very explicitly recommended that representatives of authors and publishers meet with the library community to formulate photocopy guidelines, and I am quoting verbatim from the Senate Report.

And in its more recent report on the Extension Bill the Senate again spoke of CONTU, quote, "assisting the various interests in the formulation of guidelines," close quote. It is the interested parties who should formulate guidelines by mutual agreement if and when they are ready to do so. CONTU should not transcend its limited function of assisting in bringing the parties together for that purpose. And the Authors League therefore recommends that the Commission should not promulgate its own guidelines and should not recommend any guidelines to Congress in its final report. We stand ready, as I said, to meet with the Library Associations to formulate guidelines. I had prepared to say this before I heard the libraries say this morning they are not ready to meet because they do not think they are necessary. I think time very shortly will show that they are necessary, and we are prepared to meet and formulate workable guidelines.

But if the parties do not develop guidelines where needed after CONTU's termination next July, those problems that may develop from that circumstance can be reported to the Congress by the Register in her report due after five years under Section 108(1), and she can make further recommendations to the Congress on that problem for its action.

The second aspect of the photocopying problem that I am directing myself to this morning was the establishment of clearance mechanisms. In the report on the CONTU Extension Bill the Senate Judiciary Committee stated, as Judge Fuld read to you this morning, that the Committee believes that the creation of such a clearing house prior to January 1, 1978, the effective date of the Revision Act, is highly desirable, and that the efforts of those in the private sector to establish such clearing mechanisms should be encouraged by public policy.

As the Commission knows, a clearance mechanism has been established in the private sector. And Mr. Weil, who labored mightily to create the mechanism, will report to you on it this afternoon. And I think Mr. Weil deserves our highest praise for his skill and energy and dedication in developing the Center which carries out the congressional purpose. It may not satisfy Mr. McKenna and Mr. Marke, but at least we can say for it that is what Congress told Mr. Weil and the rest of us to do, and it has been done.

Last spring the Authors' League expressed certain objections to the outline of the Center as presented to the Commission at its hearings in New York. These objections were not addressed to the technical aspects of the Center. As I mentioned then we found no fault with those elements. What we did complain of were two features of the proposed structure; first, that authors apparently would not be represented on the Board of Directors; second, that the Center would apparently not have the capability of reporting to publishers the data required to pay authors a share of copying royalty when such payments should be made.

Appropriate steps have been taken to so satisfy both objections. Authors are represented on the board of directors of the Copyright Clearance Center, and the Center will have the capability of reporting data to publishers required for payments to authors.

Further, the Center will be available to periodicals and other publications that publish fiction, poetry, belles-lettres, and other works, as well as to scientific, medical, and technical publications.

The Authors' League supports the Copyright Clearance Center and will work with it. We believe the Center will provide a, quote, workable clearance and licensing procedure, unquote, as Congress intended. Its operations will, at the very minimum, provide the first opportunity to realistically

test the licensing procedure, not speculation by parties who have an interest in scuttling it and not speculation by those of us who support it but real empirical testing in the marketplace.

We hope that the Center will receive from the library community the cooperation which Congress anticipated it would give such clearance mechanisms, as stated most explicitly in the report of the United States Senate Judiciary Committee. I cannot believe that the library community will rest on the adamant, blind position stated to you this morning by its representatives. That is not what Congress intended, and that is not what we should expect from the library community.

The Authors' League does wish to submit a complete response to that testimony. We therefore ask the Commission for leave to file a statement at a later date. We will need time because we have not yet read the library's statement-- I skimmed it only hastily this morning--and because we have not yet even received a final copy of the King Report. We have had earlier drafts.

I would, however, like to make some preliminary comments on the King Report. The basic question, it seems to me, is whether there is any library copying which exceeds the limits of 108 and therefore would constitute copyright infringement. If there is, libraries who do this copying

should obtain permission and pay royalties, and copyright owners should establish clearance mechanisms. The King Report establishes that there is copying which exceeds the limits of Section 108, far more I believe than the library representatives purport to find of it. But, in any event, copying that exceeds the limits of Section 108 calls for payment. And copyright owners have established a clearance and licensing mechanism to grant permission and collect royalties. It is a workable mechanism to users as well as for copyright owners. And if it is not the mechanism in every detail which the libraries think is workable, let us remember that they were invited to participate on the board of directors of the Center and to have input into its structuring so that it would meet any problems they thought they would have with it.

I cannot speak for the Center, but as far as I have reason to believe, that opportunity is still available. Any crying by library representatives about how the Center cannot work for them is not worthy of acceptance by the Commission, if the librarians are not willing to address themselves to the problems and how to cure them, such problems as may exist for them.

To argue at this late stage that too much work is involved is to ignore all that has gone before and all that libraries have already achieved.

Despite the findings of the King Report, which is that there is an awful lot of photocopying--which all of us knew--the library committee now argues that a clearance mechanism is not necessary and that they should be permitted to make infringing copies--those that exceed the limits of 108(g)(2)--they should be permitted to make infringing copies without permission or payment on the theory that the amount of infringing copying involved is not very large.

We do live in the era of inflation, and I guess 500,000 is not very large by today's standard. But let us get to whether the five hundred thousand is really the figure later, and let us just address ourselves to the library position.

The King Report estimates that a huge volume of library photocopying from copyrighted journal articles is carried on every year, or at least in the year it measured. I think the figure was 38 million items. To put the library argument in its perspective, to fully savor the brass required to indulge in this whittling down exercise that they have mounted before you, let us briefly recollect how they arrived at this point. From the beginning of the copyright revision/effort to date, the Authors' League and other copyright owners contended that library reproduction of journal articles was very substantial and would continue to increase. We said to Congress that libraries would expand their role as single-copy

reprinters of copyrighted material for their customers, and they have with gusto and will, all the way up into the 38 million or more range.

The Authors' League argued from the very beginning that library reproduction of entire articles was infringement, not fair use, and we were flatly opposed to this concept of a certain amount of fair use when it came to systematic reproduction by these institutions. And all reproduction by libraries is really systematic. I am not using the word "systematic" in the 108 sense.

The libraries in turn argue that their photocopying was not replacing subscriptions or purchases. We contended that even if this were so--and it is not so--that the fact that a new method of distributing copyrighted work does not diminish income from older methods, does not entitle the new user to do so without the copyright owner's permission, any more so than when phonograph records came in. They did not replace sheet music, but you did not let the phonograph companies reproduce without permission, and you did not let radio broadcast music without permission after radio evolved, and you did not let paperback book publishers publish paperback editions after it was demonstrated that they were increasing, rather than decreasing, the sale of hard-cover editions.

This debate I am not repeating for the purpose of

dissuading you on this point but to give you the background of today's discussion.

In the 1967 House version of Section 108, libraries were not given the privilege of making single copies of journal articles. There was no Section 108(d) in the House version. That privilege was added to the Senate version, and it was a compromise, as I think the library statement itself makes clear this morning. Authors and publishers accepted 108(d), which expanded the libraries' copying privilege as part of an accommodation that also included 108(q), ^{both} (q) (1), and (q) (2).

In short, libraries achieved a considerable expansion of the privilege of reproducing journal articles without permission under the Senate version but not beyond the point where copying became systematic in the technical sense that the word is used in 108(q) (2). That is a quantum limit. It may not be precisely calibrated, but it was a quantum limit. Congress was saying to the libraries at some point enough is enough. Cut it out or pay. And then Congress said, "We think you should keep copying, but at this point, for goodness sake, pay the copyright owner." And it said to the copyright owner, "Establish a clearance mechanism so they can do this easily and have immediate access."

The next step was the formulation of the inter-library proviso guidelines which defined the number of copies

that would be assumed to displace a subscription or sale.

The Authors' League has, in testimony to the Congress, recalled that there was good reason to set the figure at two, not five, two. That was the figure stated by the American Library Association's principal spokesman, Dr. Lowe. The CONTU guidelines actually set six--six or more becomes an aggregate quantity that might displace a subscription--allowing five copies per journal per year of free interlibrary copying privilege for each requesting library.

The five-copy definition was not based on empirical evidence of actual library practice. Dr. Lowe said two; Ralph Shaw had said two. I have heard other librarians say that the figure really is two or three, and at that point usually a subscription is triggered. The five-copy figure was bargained and with a little arm twisting too. It was a compromise made by copyright owners with librarians' organizations through your Commission to achieve a guideline. There is a strong likelihood that many librarians believe they got a real bargain here too, that three was all they really looked for and five was gravy.

The difference between three copies and five copies is of course translatable into large quantities of interlibrary photocopies of journal articles that would or would not be subject to royalty, depending on which figure was used, tens, maybe hundreds of thousands. If the figure three had

been adopted in the interlibrary proviso guidelines, the King estimate of interlibrary copies subject to royalties five years or less--without even getting into over five--might have been a million or a million two-fifty or maybe a million and a half instead of 500,000 copies.

Having thus whittled down the number of copies subject to royalty payments by the addition of 108(d) and the proviso and further whittled down the number of interlibrary copies subject to royalties by the five-copy standard in the proviso guideline, one would have expected that the library associations would have been satisfied--indeed, elated--to finally cooperate with publishers and authors in establishing a clearance mechanism to pay for photocopies that exceeded the various generous boundary lines achieved in 108(d) and (g) and in the CONTU guidelines. But having thus expanded the limits by this whittling down process--public servants pleading the public interest, looking for a reasonable compromise--they now tell us this morning that the amount of copying which does exceed 108(g)(2) and which does exceed the guidelines is so, quote, small, unquote, that although it is infringement, they should not be required to pay for it. Even if the amount of copying subject to royalty really were too small from the library's viewpoint or from anybody's viewpoint, the library argument could not be accepted. Congress has granted rights to copyright owners which such photocopying

exceeds, systematic photocopying. Large or small, the libraries are not permitted to infringe, and they are not permitted to infringe, on the theory that the amount of infringement is not large by their lights.

Moreover, this whittling down approach would erode, for all practical purposes, copyright protection for journals against photocopying, and would erode many other authors' rights. I wonder if the libraries would apply the same theory to the fine for late books. After all, if I bring it back the day after, I only have to pay a nickel. Now, what is the sense of paying a nickel? So, we move the guideline up one day. If you bring it back a day late, no fine. Well, what is the sense of paying a nickel the next day? That is too small. Why can I not keep the book for a year? That makes more sense and much less administrative cost. They do not have to keep checking.

Anybody's rights can be whittled down to nothing by this process, and that is what we have witnessed over the years, culminating today with the testimony of Mr. McKenna and his confrères.

Actually the King study furnishes basis for the argument that if only 500,000 copies out of 38 million copies are subject to royalty, that something is wrong with the guidelines. Maybe they were too generous. When you have this vast volume of copying, if the guidelines can only

protect 500,000 copies, maybe we had better look at the guidelines again. Maybe it should not be five. Maybe it should be four. And maybe it should not be four; maybe it should be three. And maybe we ought to go back to what Dr. Lowe told us was realistic in the first place, two. But we are not here proposing to change the guideline. We are here proposing to try to illustrate to you off-the-cuff right now how ridiculous the library argument is and how inequitable it is and how much a breach of faith with the Congress it is.

Five hundred thousand copies in itself would not be so insignificant as to warrant abandoning copyright protection for journal articles vis-a-vis library photocopy. Nor is it so insignificant as to warrant abandoning the realistic test of a copyright clearance mechanism. The Center can work on 500,000 copies. I will not go into the details of that. Mr. Weil will. But even if the center did nothing else, with library cooperation the Center could provide a realistic test of the clearance mechanism, and I do not know why libraries will not cooperate other than for selfish reasons of their own; and I will not accept this pious nonsense about the public interest. The guy who wrote it served the public interest as much as the middleman who makes photocopies of it. I cannot forget that ever. The librarian helps culture but, damn it, he does not create more than the

author or the publisher--a considerable amount less. I think that largely the motivation for the opposition to the Center is the fear that it will work, and you do not cooperate with something you fear will work and which you fear will require you to pay something out of a budget in an area where you feel that it should be spent someplace else.

The fact is that the King Report does define it. We will discuss further the statement submitted by the libraries and an analysis of the King Report in our formal submissions to the Commission. But I would like to make a few comments on the King Report as it is used by the libraries.

Interlibrary copying. The estimate is 500,000 copies, say librarians. But that is based on five years or less. When you add the copies older than five years, as the King report indicates, there is a substantial increase. It goes up to 1,925,000. When you deal with in-house copying, which the librarians somehow have gotten under the rug, you are talking about 21,720,000 copies, of which 9,670,000 copies are produced by special libraries, many of which are libraries operated by for-profit institutions.

The King Report makes no real analysis of how much of this vast amount of journal article copying is systematic. So, it is impossible for me to tell you that it would one million or two million or five million. We do not have

guidelines. We have not agreed on what is or is not within 108(g)(2), but some substantial portion of this journal copying is; and we are talking about possibly several million more copies.

And when we deal with special libraries--

Mr. McKenna's constituency--we are talking about people who are doing it for money because their bosses want them to do it because it serves the interests of corporate employers who maintain these libraries, many of which will be copying, according to estimates I have heard, a quarter of a million, a half a million, and even more copies in the libraries of a single company, and all of that will be subject to royalty.

Intrasystem is a new category I had not even heard of before in the context of our discussion and our analysis of the law, but it is obvious that a large proportion of intrasystem copying will be subject to royalty. So that there is plenty of work there for the Copyright Clearance Center, and we are not talking about de minimus copying in excess of the boundaries of 108(g)(2). We are talking about an awful lot of copying.

And all we are talking about in the King Report is the year surveyed. The King Report does not tell us how much copying is going to be next year or the year after that. And one of the few things that we know about library photocopying is that it escalates; it does not go down, it

goes up. So, even if you took the 500,000, a cautious estimate, of Mr. King's analysis of interlibrary copying, you cannot assume that next year it would only be 500,⁰⁰⁰. And when you take the whole totality of what we are talking about, we are considering much more than that.

I think that the King Report really--while a fine piece of work and useful--is irrelevant to the discussion of what Section 108(g)(2) means and how it is enforceable. I think that nothing in the King report in any way negates the need for what Congress mandated, what Congress very clearly expressed its intention that we do on both sides of this table. Set up a clearance mechanism so that rights protected under 108(g)(2) could be used by a library on payment of fees under a workable system. And I think that while the Commission itself cannot in any way impose that system or take any steps to implement it, it can perhaps remind the libraries of the obligations they did assume in the whole process of revision during the whole process of bargaining which brought them to the very generous position they arrived at under 108(d) and your guidelines, and remind them of their obligation to cooperate in the operation of the clearance mechanism and others that may be evolved because none of us on this side of the table, to my knowledge, insists that this should be the only mechanism. There is room for more and for an interplay between the mechanisms. Thank you.

CHAIRMAN FULD: Thank you, Mr. Karp.

Professor Nimmer.

VICE CHAIRMAN NIMMER: I have a few questions, Irwin. First, with respect to the guidelines, possible change in the guidelines, I understand your point that you do not think that CONTU is the appropriate body to do that. But quite apart from that, I am puzzled about the whole idea of supplementary or changing guidelines, whoever does it, in this sense: The guidelines as they now exist have a force of law, have the force of law, to the extent that they do by virtue of the ^{Conference} Committee Report adopting them and saying, "We think this fairly expresses what we meant and is a fair application of it." But if now the interested parties were to evolve further guidelines, certainly just their agreement would not give it the force of law; it might give it the force of contract or at least indicate as between those who were agreeing what they intend to do. But as far as making it copyright law or in effect a regulation applying the copyright law, such an agreement would not have that effect. And, indeed, even if one went to Congress at this point and if somehow the appropriate committee were willing to say, "Yes, we think that is what--these further guidelines--we think that is what 108 means," even that at this point would not have the force of law, it seems to me, because one Congress cannot say what a law enacted by a previous Congress means.

So, it is not clear to me what the efficacy of any change of guidelines would be. Would you care to address this?

MR. KARP: Yes, I certainly would. First of all, I thought I made it clear that I was not advocating a change of the guidelines.

VICE CHAIRMAN NIMMER: You clearly were not advocating CONTU doing it, but I was not clear that--

MR. KARP: I was not advocating anybody doing it. But let me address myself to your statement, Professor Nimmer. The guidelines you adopted with the parties do not have the force of law. Congress explicitly said they do not have the force of law. The House-Senate Conference Committee Report said that the Conference Committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases now or in the future. It is recognized that their purpose is to provide guidance in commonly encountered inter-library loan situations and that with these--and I quote again--with these qualifications the Conference Committee agrees that the guidelines are a reasonable interpretation of proviso 108(g)(2) in the most common situations to which they apply today. They were only advisory. They do not have the force of law.

We would be perfectly within our legal rights to say, "Let us ignore them and sue for infringement," if the

copying, in our view of the law, exceeds 108(g)(2). The spirit of the guidelines dictates that we behave honorably under them. But, on the other hand, that same spirit dictates that everybody behave honorably and that everybody behave fairly and that nobody, for example, walk into your hearing in the morning on Friday October 21st and say, "The educational guidelines do not mean a thing because they are only minimum, and everybody is free to copy as much as they think is fair use of it." That was not how those guidelines were written.

educational
Those/guidelines happen to have much more force than your guidelines do because all you have to do is read the House Report on those guidelines. But these guidelines do not have the force of law and are not binding. I repeat, I merely point out, that I talked about the possible unfairness of the guidelines and their inadequacy only in the context of describing a process by which we arrive at the morning of Friday, October 21st, with the library community having achieved these great gains now takes the yardsticks that we have given them by compromise and says, "Now, what is beyond that, that is too small to bother with."

VICE CHAIRMAN NIMMER: I get your point. [Laughter]

MR. KARP: I was prepared to repeat it again, if you had not. [Laughter]

VICE CHAIRMAN NIMMER: I do not want to get into a

debate with you here whether it has the force of law. Nothing has the force of law outside of the statute itself, not even the Committee Reports.

MR. KARP: No, that is not so. Committee Reports, as you and I know by reading the decided opinions, very often have the force of law.

VICE CHAIRMAN NIMMER: They may or may not, depending upon whether a court wants to go along with it, which is precisely the same point about the guidelines. It is likely that the courts would go along with the guidelines. At any rate, I get your response.

Another question: What is your position, or the authors' position, with respect to what should be done about the photocopying mills, the outfits that photocopy for profit, and that presumably, as far as we know without any very hard data, photocopy a great deal of copyrighted materials? First, a subquestion on that. Do you see the Copyright Clearance Center as applicable there, or is that unusable simply because these outfits are not going to be interested in getting such clearance?

MR. KARP: I think this may not be applicable for that reason because the copying is done on such a mass basis that it would require other types of licensing and because the problem is really a separate one. It is a problem we intend to deal with, come January 1st. We do not for a minute

expect to sit by and watch print shops grind out copies of copyrighted books and articles without taking action.

VICE CHAIRMAN NIMMER: May I ask, what would your reaction be, given the problem of enforcing and policing these kinds of activities--true, you can bring some test cases and maybe that would be effective in more of those cases themselves. But if that were not effective, what would your reaction be to a law that required those who photocopy for profit--however it is going to be defined--to report the total number of reproductions that they make in a given period and pay a given sum per reproduction during that period?

MR. KARP: No, what you are really saying is, What is my reaction to Congress saying, "We will no longer give the exclusive right to print," because when you are talking about photocopying mills, you are talking about printshops, no different than if they were using a printing press instead of an offset machine.

VICE CHAIRMAN NIMMER: It might or might not be, depending on how the law spells it out.

MR. KARP: In fact, no different in the case of a library that does it systematically.

VICE CHAIRMAN NIMMER: Pardon me?

MR. KARP: In fact, there is really no difference in the case of a library.

VICE CHAIRMAN NIMMER: Yes, but the law could be spelled out to limit it to the photocopying process but not necessarily. But, anyway, go on.

MR. KARP: I do not think that is realistic, that Congress would at any point say, "We will let people infringe by using one machine, but we will not let them infringe by using others. We will impose compulsory licensing if you run off 400 copies of a book by photocopy but not if you do it with an offset or a multigraph or something like that."

VICE CHAIRMAN NIMMER: If I understand your response, you would be against that kind of mechanism.

MR. KARP: Of course. Of course. Photocopying mills can get licenses; and whether it is through a clearing center or otherwise is a question we can explore. I am not in a position to talk for the Clearance Center on whether they are prepared to license that type of copying, which was certainly not within the concept of Congress when it talked about establishing workable clearance and licensing mechanisms for library photocopy. These are not libraries. These are printshops.

CHAIRMAN FULD: Mr. Wedgeworth.

COMMISSIONER WEDGEWORTH: Mr. Karp, in terms of the interest of your author constituency, what type of cooperation do you believe that the nation's libraries ought to give to

the Copy/^{right}Clearance Center to which you referred as being antagonistic? I hope that is not an overstatement of what you said.

MR. KARP: The cooperation would consist of doing precisely what Congress intended, to get permission through the Clearance Center--this or another--to make photocopies which exceed the limits of 108(g)(2). In the case of the CCC will that Mr. Weil describe, it involves the very simple procedures of bundling up first pages of articles copied, shipping them off to the Center, or using one of the other methods of reporting on copying in excess of 108(g)(2), and then paying, prepaying, or paying on billing.

COMMISSIONER WEDGEWORTH: All those are services available from the Clearance Center?

MR. KARP: Pardon?

COMMISSIONER WEDGEWORTH: Those services which you described are available from the--

MR. KARP: Let me ask to leave it to to Mr. Weil describe the services of the Clearance Center to avoid duplication and to make sure it is done accurately.

COMMISSIONER WEDGEWORTH: In your opinion, do you-- do I understand you to say that you think that the 1976 Copyright Law permits copying that greatly exceeds what is presently legally allowable for libraries?

MR. KARP: No, I did not say that. I think it does,

but that is not what I said. What I said was that the copying permitted under the final version was much greater--permits much greater copying--than what would have been permitted under the ^{original} House version of the Revision Bill.

COMMISSIONER WEDGEWORTH: Yes, but my question is--

MR. KARP: You asked me did you understand me to say, and I said no, that is not what I said. I told you what I thought I had said.

COMMISSIONER WEDGEWORTH: Yes, but in your opinion do you believe that this is greater in terms of allowable legal limits than is presently possible, legally possible, for libraries?

MR. KARP: Yes, yes, I think that the eight judges who have said it was were right, and the eight judges who were not so sure for one reason or another in Williams and Wilkins were wrong.

CHAIRMAN FULD: Mr. Perle.

COMMISSIONER PERLE: For the sake of myself as well as my brethren, I would like to read--

MR. KARP: What about Ms. Wilcox and Ms. Karpatkin?

COMMISSIONER PERLE: I consider "brethren" or "guys" to be a generic term.

MR. KARP: You are off to a good start.

COMMISSIONER PERLE: I would like to read from Public Law 93-573, which says: "The purpose of the Commission,

CONTU, is to study and compile data on the reproduction and use of copyrighted works of authorship by various forms of machine reproduction," and goes on to say, "The Commission shall make recommendations as to such changes in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works and to provide recognition of the rights of copyright owners."

We have heard some testimony this morning from the librarian group. We have heard some testimony from you this afternoon. The agenda says, "Recommendations on Photocopying on Behalf of the Authors League, Irwin Karp, Counsel." When you were last here, you were asked for recommendations of the Authors League as to those changes, if any, that the Authors League recommends in the law. And, as I understood that and as I understand it now, it means the law as it exists today under the 1909 act, and the law as it will exist on January 1, 1978, under the Copyright Law Revision Act of 1976. Section 108 is part of the things to which we must address ourselves should there be changes. And it seems to me that your testimony, valid though it may or may not be, is addressing itself primarily to what the librarians have said rather than to what this Commission, as a Commission, should recommend to the Congress. And, once again, I think it is in order to ask what changes, if any, in the Copyright Law of 1976 does the Authors' League recommend to this Commission?

MR. KARP: In connection with the area that you are interested in?

COMMISSIONER PERLE: Specifically in connection with the congressional mandate that was given this Commission.

MR. KARP: We have no changes to recommend.

COMMISSIONER PERLE: No changes whatever from 108?

MR. KARP: No.

COMMISSIONER PERLE: And you would leave the law just as it is?

MR. KARP: As far as your purposes are concerned, yes. If we find that we cannot live with the library concept, we will come back to Congress and ask them to change 108.

COMMISSIONER PERLE: Thank you. And you think this Commission should end up with a report to the Congress which says that there should be no changes in the copyright law in so far as the reproduction--various forms of machine work--reproduction is concerned?

MR. KARP: Yes. Let me explain why. Obviously we are not satisfied with the librarians' interpretation of 108. And it may be that their interpretation and ours will have to be tested. Likely we can test it in the courts a lot quicker than we will ever get Congress to change it, for one thing.

COMMISSIONER PERLE: Yes, but our job is--

MR. KARP: Excuse me. But I am not giving up on the fact that the librarians are ^{not} necessarily bound by what Dr. McKenna said this morning or what Julius Marke said this morning. I think there are other voices to be heard from in the library community, and there will be second thoughts. I think this little dialogue could be continued. And I do not propose from the point of view of the Authors League--I only speak for the Authors League--I do not propose to try to solve our problems with the librarians by telling this Commission, constituted of library and publisher representatives and four public representatives, to try to work out a law that will satisfy us or them. You cannot do it. I mean, recommendations that will satisfy us both. I think the time has not yet arrived when we should give up our efforts--the libraries, publishers, and authors--to work out this problem. I do not think you can work it out for us.

COMMISSIONER PERLE: I think that we are going to make recommendations come hell or high water. [Laughter]

I do not know what they are going to be.

MR. KARP: That is your privilege. You do not need my permission for that. [Laughter]

COMMISSIONER PERLE: It is not our privilege; it is our duty. And we will make them. And I think that we would appreciate--I, for one, would appreciate--from all the concerned parties specific recommendations of what changes in

law, if any, there should be. I want to make it abundantly clear for myself. I want to make sure that I understand that the position of the Authors' League is that this Commission should come up with a recommendation that there should be no change in the law.

MR. KARP: No, I did not say that; it is a little tighter. What I said was that you should make no recommendations as to changes.

COMMISSIONER PERLE: Me?

MR. KARP: No, not only you personally. I am talking about you and the members of your Commission. The Commission should not make recommendations as to changes. That is not the same thing as saying there should be no changes.

COMMISSIONER PERLE: But we were told to.

MR. KARP: I am not telling you you cannot. You are asking what we recommend. Now, that is what I am recommending.

COMMISSIONER PERLE: I think that I understand that the Authors League does not have any recommendations to make.

MR. KARP: We have recommendations. [Laughter]

COMMISSIONER PERLE: Please tell us, for God's sake! [Laughter]

MR. KARP: No, no. Our recommendations vis-a-vis CONTU are the same as the librarians'. You should not make

any recommendations for changes in Section 108.

COMMISSIONER PERLE: I am not referring to Section 108, Irwin. I am referring to what the Congress told us to do.

MR. KARP: Oh, no, I have--for example, I have recommendations for changes on Chapter 4 of the United States Copyright Act. That is not in your mandate. There is no reason for me to tell you how I think Chapter 4 ought to be changed. Section 108 is your mandate.

COMMISSIONER PERLE: No, it is not.

MR. KARP: I will not quibble. I think it is.

COMMISSIONER PERLE: I refer you again to the public law. But I think that as far as I am concerned, unless I get some sort of written submission or further oral submission, I will take it and I will assume that there are no specific recommendations that the Authors' League has as to changes that should be recommended by CONTU.

MR. KARP: Well, I have already explained why we did not say that, but there is no sense in my repeating it again for you.

CHAIRMAN FULD: Mr. Lacy.

COMMISSIONER LACY: In the--I have forgotten whether it is the Senate Committee Report or the House Committee Report or both, but in the legislative reports on the bill there is a considerable discussion of what the Committee

intended "systematic copying" to mean, and this is in-house copying, not qualified by the 108(g)(2) references to inter-library copying. Do you think that is an adequate--are you basically satisfied with that gloss on the systematic--

MR. KARP: No. No. I--I--

COMMISSIONER LACY: There is no trick in this.

MR. KARP: No. No. Well, I know there is no trick in it.

COMMISSIONER LACY: Do not be sure. [Laughter]

MR. KARP: You and I have known each other a long time. I am sure. Nobody came before you to say they were satisfied with 108. None of us did. The librarians are not satisfied. We are not satisfied. What we are saying is we are prepared to live with 108, which is a compromise. We do not want to keep battling over it.

COMMISSIONER LACY: I guess in a sense I am really saying is it sufficiently clear so that you do not feel the need for guidelines on that specific definition--

MR. KARP: No. That is a different question. I have twice testified to this Commission I think it would be advisable for the parties to draw guidelines.

COMMISSIONER LACY: One other point, and I do not know how many of my siblings share the same guilt with me, but--[laughter]--I did not hear, I thought, or read, I thought, in the library testimony here this morning any explicit

statement of an intention not to cooperate with the Copyright Clearing Center. There was certainly not a statement to do it, but I understood them simply to be quiet on that point. And I also did not think that I heard a statement that it was permissible to make infringing copies without permission. Am I wrong about that perhaps?

MR. KARP: I read the library's statement as indicating their belief that there was no purpose in a mechanism and that they could live with the guidelines as they interpreted them. And I got the sense from the statement, supplemented by the testimony, that they did not intend to cooperate. If they intend to cooperate, that is fine. I am all for it.

As far as the copying goes, I was bemused by the testimony of two of the witnesses which seemed to say to me-- and of course I sat in the back of the room and they were not really talking very loud and some of what they said was not very clear anyway--but it seemed to add up to a statement that whenever anybody asked the library to copy something, it was probably fair use and therefore the library could copy it even if 108 did not permit it. That is what I thought I heard in the back of the room.

COMMISSIONER LACY: That is not quite the same thing as saying that even if it is not fair use and infringing, it is all right to do it.

MR. KARP: Oh, it is the same thing to me. If you bound your universe so that everything is right, that means you can do anything that is in the universe.

COMMISSIONER LACY: But I mean it becomes an argument over what is fair use and not over whether exceeding fair use is permissible.

MR. KARP: Yes, that is true.

COMMISSIONER LACY: There might be a very real argument all the same but just a different--Mr. Chairman, perhaps the library delegation, before we break up, should have an opportunity to very briefly indicate--

CHAIRMAN FULD: We had stated they would have an opportunity to talk, if they wished to, very briefly.

Any other questions?

COMMISSIONER WEDGEWORTH: I just have a brief question. Mr. Karp, I am interested in your interpretation of the statement about the CONTU guidelines, and I was just trying to think of an example that might illustrate some of the flexibility that I assumed was being referred to this morning in terms of establishing minimal limits. For example, if Mr. Hersey had to make a speech and at the last minute discovered that he really needed a copy of an article or another piece of copyrighted material and he went to a library and said, "I need this by tomorrow. Can you get it for me?" and they would say, "Well, no, we have already had

five copies made on interlibrary loan for this piece of material" and he says, "But I have to have it so that I can make this speech," do you consider that a circumstance under which the user might prevail and some rights might be exempt in this case for a library exceeding that limitation on the CONTU guidelines?

MR. KARP: I cannot answer the question unless you also add to it another if. And that is: And the library says to Mr. Hersey, "We have to pay a 20-cent royalty in order to do this. Do you have any objection to paying it?" I will let Mr. Hersey answer for himself, but I think I could guess what his answer is. "Of course I will pay the 20-cent royalty."

When you pose that alternative, we are back to square one where we were at the beginning of the copyright debate. And that is why, to answer Mr. Lacy's question, everything I have heard from the librarians this morning was back to the old black-and-white alternative. If we cannot copy for the little kid in Senator Burdick's classroom out in North Dakota, that one page of the biology textbook--baloney, of course that is fair use! When you get to the whole speech and you get to the parameters of systematic copying, never is there added to the problem that is presented there is a royalty to be paid.

COMMISSIONER WEDGEWORTH: That is not the issue

because--

MR. KARP: That is my point. That is exactly what the Congress intended, when you get beyond permissible copying.

COMMISSIONER WEDGEWORTH: Yes, but you are ignoring the guidelines for classroom which give exactly that particular instance.

MR. KARP: No, we were talking about a photocopying example. The guidelines for classroom copying, if you are referring to those, deal with a teacher making a single copy of an article. We agree they could. Now, if you are talking about that, there is no problem. There never was.

COMMISSIONER WEDGEWORTH: That is right. That is exactly what we are talking about only it is under inter-library loan.

MR. KARP: No, we are not. You were talking about the five-copy guideline.

COMMISSIONER WEDGEWORTH: No, the only difference is having the item available on site and not having the item available on site.

MR. KARP: But he is going to need it tomorrow morning and you are going to get it on interlibrary loan?

COMMISSIONER WEDGEWORTH: Within whatever limitations are for getting it on interlibrary loan.

MR. KARP: We have not argued, to my knowledge, that

interlibrary or not, the guideline, the classroom guidelines, would be supplanted. That has never been an issue.

COMMISSIONER WEDGEWORTH: No, that was not the point. The general question is, Do you conceive of any circumstances under which that five-copy limitation could not be exceeded?

MR. KARP: Not offhand, no.

COMMISSIONER WEDGEWORTH: That is all. That is my only question.

MR. KARP: And certainly not by any library that had enrolled in a clearing[^] house and paid a royalty. I do not see why it would have to be.

CHAIRMAN FULD: Mrs. Wilcox.

COMMISSIONER WILCOX: Pursuing the "if" that you added onto the condition there--do you conceive of any possibility when any interlibrary loan should be permissible?

MR. KARP: Of course, under the guidelines, what they define as permissible interlibrary loans, up to the limits, of course. Not five copies a library a year. We are talking about five copies per title for every darn issue--for issue--serial for every serial in the library. We are talking about a lot of--excuse me, Mrs. Wilcox--we are talking, as the King Report shows, about millions of copies you can make under the guidelines without paying royalty.

What are we talking about?

COMMISSIONER WILCOX: I am confused because from what you said earlier, you were talking about it should not have been five, it should have been two. And I thought maybe you were saying you really were questioning that whole thing.

MR. KARP: I was, in the context of explaining how much you had gotten already and why the heck were you not satisfied to now cooperate at least when you got beyond that guideline. That five-copy limit in the guideline was, in my view, an enormous gift to the American library system. And what outrages me is that they are not satisfied with it; they want to go beyond that and not pay for something that goes beyond the guidelines. How can I be more simple in presenting my reactions to it?

CHAIRMAN FULD: Thank you, Mr. Karp.

Mr. Charles Lieb, senior partner in the New York law firm of Paskus, Gordon & Hyman, and copyright counsel for the Association of American Publishers, will now address us. He appeared before the Commission in January and April of this year and today will present the AAP's recommendations on photocopying.

[Continued on page following.]

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STATEMENT OF MR. CHARLES LIEB, COPYRIGHT
COUNSEL FOR THE ASSOCIATION OF AMERICAN
PUBLISHERS, ACCOMPANIED BY MR. MICHAEL
HARRIS, MEMBER OF THE A.A.P. COPYRIGHT
COMMITTEE

MR. LIEB: Judge Fuld and ladies and gentlemen:
Thank you. I should like to ask permission to share my time
with Mr. Michael Harris of John Wiley, who is a member of
the AAP Copyright Committee, who would like to talk
specifically about some of his observations with respect to
the King Report.

CHAIRMAN FULD: Do you wish him to sit with you?

MR. LIEB: Yes, surely.

[Mr. Harris takes a chair at the witness table.]

MR. LIEB: I had prepared what I had thought was
a lovely outline from which to speak, but I think that if I
spoke from it, I would probably bore you and cover much of
the ground that has already been covered so ably by my
brother, Irwin Karp, with whose remarks I associate myself
in almost every respect.

First, I would like to come to Mr. Perle and his
question of Mr. Karp. I do not--it may be presumptuous for
me to say so, but you asked the question. I am not at all
sure that your supposition that Congress has instructed this
Commission to advise with respect to photocopying and

computer protection is necessarily correct. The law that you read or the language in the public law was authored in October, 1967, and it called for a three-year life of the Commission; and certainly at that time I know most of the people here know that it was contemplated that the conclusions and recommendations of CONTU would be in hand by Congress before Congress passed the Revision Bill. As it has a habit of doing, time passed. And the bill was repropose one, two, three, four, five times, each time with a three-year life. The first time the term of CONTU would have expired in 1970; when the bill was finally passed, the term expires in 1977, now 1978. But in the meantime, Congress had taken the bit in its teeth.

I agree that it is an ambiguous and a questionable situation, but with due respect to Commissioner Perle, I am not just as sure as he is that you have the mandate to recommend changes to the law which is not yet effective. And, indeed, as I look at Section 108(i), where Congress really took up the question of possible changes, it said, "We will review photocopying in five-year cycles, and the next cycle will be five years after the effective date of this law, and we instruct the Register of Copyright not to look to CONTU, which maybe was an oversight in the law, but we instruct," says Subsection (i), "the Register to talk to the interested parties and then submit her report and

recommendations." I do not want to be contentious about it, but this is a prelude to the statement that I want to make for AAP, which apparently you will find just as distasteful as Irwin Karp's statement. Except for your suggestion that 117 be eliminated on the supposition that it is made clear that computer-based data is protectable and, therefore, that Section 117 says that whatever the law is, it is, becomes surplusage, we would have no recommendations for change in the 1976 Copyright Law at this time, and we join with the Authors League and with the libraries in suggesting that changes wait for the developments of the coming five years and the report and recommendations of the Register.

There are points, however--there are things, however, which we think CONTU should address itself to, and I have in mind of course the situation that has been adverted to by Mr. Karp and was discussed this morning by the Library Associations where we have a strangely out of kilter situation. Let us take a look at what we have.

We have Section 107 and 108. We will never have guidelines on Section 107 because of the nature of the doctrine of fair use. We have Section 108, which covers various kinds of copying. We have guidelines--I spoke too quickly on "never have any guidelines." Of course we have the classroom copying guidelines with respect to schools. But with 108 we have a guideline which, on its very face, is not

intended to be complete--on its very face says that these guidelines are not intended to cover copying of material that is more than five years old, and it did not have to say, because it was patent from the preamble which said it concerned itself only with the interlibrary proviso in Section 108(g)-(2), that it was not concerning itself with guidelines with respect to copying that libraries do for their own patrons. And the King Report showed that that is where the bulk of the copying takes place.

How, in the name of good sense, can we contemplate with any degree of comfort entering the new world of the 1976 Copyright Law with nothing but bared swords really between the parties when it comes to ^{the} copying that a library may do for its own patrons. This really does not make sense.

I am not attempting to assume the mantle of virtue, but we really, as you know, have offered for the past years to attempt to reach agreement on guidelines. My own guess is that had it not been for the intervention of the Register of Copyrights, even the interlibrary proviso guidelines that are known as the CONTU guidelines probably would not have been accepted.

I think it may be only a slight exaggeration to say that the libraries were really dragged to that table and finally reluctantly consented. It was always understood at the time that guidelines with respect to copying what the

library does itself for its own patrons would have to be considered--or that may be unfair--was a subject that was not covered. And now we are met with the statement that no, we do not think that it is appropriate to talk about this.

I would go further in this respect than my usually irascible friend, Mr. Karp. I would not only suggest that it would be well for you to attempt to bring the parties to the table; I regard it almost as your duty to exercise whatever force and suasion that is at your command to say to the parties, "Come and talk with us, and we will make a record for the public as to who is responsible if you do not," because this, it seems to me, is the unresolved portion that affects the entire law with respect to lithography. I was on a platform last week with one of the gentlemen who spoke this morning, who is one of my very good friends; we are personally intimate, friendly. He said to a group of librarians that he felt that these issues should be decided by courts, and therefore it would be a mistake for libraries to attempt to reach agreement on fair use. I think that that is not the socially desirable view. I do not think that that is the objective that the libraries of America should have. I would think that instead of looking for another ten years of litigation that they would think, as do we, that it would be in the public interest that we attempt to hammer out an agreement. And, as agreements^e go, it would be in part good

for them and in part bad for them and in part good for us and in part bad for us. But at least it would be an agreement which would resolve this issue that needs to be resolved.

I would like to aver to what Mr. Lacy said about guidelines on systematic copying. We have some instruction as to what systematic copying is, although I am always interested to note that the instruction that there is is overlooked; and, indeed, brushed under the carpet by their libraries when they put out literature. The instruction is in the 1975 Senate Report. And the 1975 Senate Report is the report which says at page 70 that here are three instances at any rate of systematic copying which is impermissible. And one, I am sure I need not remind you, presents a situation which, except for the name, is an NLM situation, as it was disclosed in the Williams and Wilkins case.

COMMISSIONER LACY: NLM or NIH.

MR. LIEB: The first was a National Library of Medicine case, the library supplying copies. The second instance was a National Institutes of Health case, a research organization having 12,000 researchers and subscribing to one or two copies and making use of the photocopying machine instead of subscriptions. And the third instance was of consortia.

I would like leave--we will attach to the paper that we will submit with your leave after the close of the

meeting, correspondence which the AAP had with Senator McClellan. We wrote to the Senator following the publication in October of 1976 by the ALA of its booklet in which, in talking of the legislative history of the Act, completely overlooked the Senate Report. And we wrote to the Senator and said, "What about it?" And the Senator replied on January 12, 1977, saying, "The legislative history consists of the Committee Reports of both the Senate and the House, the Conference Report, and the floor debate. Unless the Conference Report modified language in the Senate Bill or Report, the most authoritative expression of the intent of S. 22 would be the Report of the Senate Committee on the Judiciary. There are several sections of S. 22 where major changes were made by the House of Representatives and accepted in the Conference Committee. This, however, is not the situation with respect to the library photocopying provisions. Section 108 was principally developed in the Senate, and all the language of the Senate Bill was retained by the House of Representatives. The amendment made by the House to Section 108(g)(2) and accepted by the Senate managers of the Bill incorporates in the statute the legislative intent of the Senate report relating to 'systematic reproduction or distribution.' I have examined," says the Senator, "the report of the House Committee on S. 22, and there is nothing contained in that document which in any way purports to

modify the intent of the Senate language. Furthermore, it is significant that the Conference Report does not contain any language modifying the language of the Senate Report on systematic reproduction, although on other subjects the Conference Report does directly modify language in either the Senate or House Reports." In consequence, we feel that we do have some very particular examples of systematic copying, but I do feel, nevertheless, that there are many other instances which ought to be examined. And there ought to be a reasonable effort to determine on which side of the line instances of such copying would fall, whether it prohibited systematic or whether it would fall within other permitted sections of the Act.

I would like also to come to industry-related libraries. The suggestion was made this morning--and has been made frequently by library representatives--that an industry-related library takes exactly the same position under Section 108 that a non-profit library does, provided, I assume, that its stacks are open to at least a section of the public or specialized researchers. I really do not think that is the fact. There are two things to be said.

First of all, the Senate Report clearly says that industry-related libraries do not get the advantage of 108 copying privileges. The House Committee Report said that in instances of isolated and unrelated copying, industry-related

libraries do get the benefit of 108. The Conference Report says that where it is isolated and sporadic, an industry-related library gets the coverage of 108. But our mutual friend Tom Brennan who, in an article appearing in the February, 1977 issue of the Bulletin of the Copyright Society--and he, you will recall, was the legislative assistant to Senator McClellan--he wrote that the Senate conferees were able to accept that conference language about industry-related libraries being able to make occasional and sporadic copies under Section 108. He said the Senate conferees were able to accept that only because they regarded those instances as Section 107, fair-use copying practices.

So, the first point I want to make is you should not assume--I do not think that anybody should assume--that the situation with respect to an industry library's copying practices is clear. I certainly think it is reasonable to assume that what Brennan said in his article that, in any event, if there is coverage within 108, it must be strictly construed. I think that is reasonable.

But I go further and say in response to what we have said here earlier that even the Patterson language that is included in the House Report makes clear that whatever protection an industry-related library gets from 108, it gets no protection for unsupervised use of a floor machine. It is as responsible for the use of a coin machine on its floor as

if the machine had been operated by its own staff librarians. I do not think there is any question about that.

One other question that was raised that intrigues me--and I think it really is the tip of an iceberg that requires a lot more exploration because, as I try to understand and rationalize the conclusions of the library associations as stated this morning, I must assume that they really mean what they say when they say, as they did at a meeting of the Special Libraries Association, "Librarians, you can first do your copying under Section 108 and then, when you have reached the limit, as permitted by Section 108, you can then turn back to fair use copying under Section 107." I think that is turning day into night and black into white, and it is not a question of saying it is so or it is not so or even of referring to the legislative report--which, incidentally, says that 108 gives additional rights. But I think that it takes only the most casual analysis of what kind of copying practices we are talking about and of what privileges are given in Section 108 to understand that except in the most theoretical instance or in a de minimus instance, there can be no occasion when after Section 108's privilege has been exhausted there are any substantial additional copying privileges under 107. Really, I do not want to parse 108, because time is short; but I think maybe what is meant, maybe what they are saying is that Subsection (d), copying of

articles and periodicals, may be some way to go beyond the limitations and prohibitions of Subsection (g) against multiple and systematic copying. But, if words mean anything, you cannot equate "fair use copying" with "systematic copying" or "fair use copying" with "multiple copying". So, I think that it has to be accepted that except for the most esoteric classroom impractical examples that you can think of, the libraries can take no protection from 107, once they have exceeded the special privileges granted in Section 108.

We urge, in summary, we urge--strongly urge--that you literally grab the parties by the ears and force them to the negotiating table in the eight or nine months left in CONTU's life; that you point out to them the serious defects that are left in a statute which, by its very nature, has to be only most general; and that you ask for their cooperation.

We ask also for your cooperation in giving the CCC, the Copyright Clearance Center, a good send-off.

Mr. Well will tell you more about that. We have something in being to which I think a vast majority of the principal publishers of will subscribe-- journals, in which they will put their journals. We have every reason to believe that industry-related libraries, the vast majority of them, will be making use of CCC. We know that the vast amount of copying done by middlemen, document finders and document procurers who, up to now, have been acting outside the frame of the law, will find that all at

once they become legitimized and that they will enter. And of course we are hopeful that the non-profit sector, albeit reluctantly, will also join.

I would like now --unless there are questions about my contentious views of the law, I would like to turn the table over to Mr. Harris, who will talk about the King Report.

CHAIRMAN FULD: Mr. Perle has a question, I think.

COMMISSIONER PERLE: Several things. First, let me say for the sake of my brethren and sistern, that I am a member of the Copyright Committee of the AAP, which puts me in a somewhat sort of strange but I do not think schizoid position. I hope it is not schizoid.

First, as to the function of this Commission, I think we have to do a little talking ourselves as to whether we are going to come up with statutory changes in 108 recommendations or mere changes in procedures, one of the words that is used in the statute, our legislation. In any event, I think it is clear that we have to come up with something.

One of the things I would like to know from you, Charles, is if we take the parties by the ears and bang heads together and do not get accord or concurrence, what then is your recommendation that CONTU should do?

MR. LIEB: I would then recommend that you state

for the record what you attempted to do and what the positions of the parties were, and that you leave that to be judged at a later date by the Congress.

COMMISSIONER PERLE: Do you think that CONTU should make its own judgment or appraisal of what should be done?

MR. LIEB: No, I do not.

COMMISSIONER PERLE: Thank you.

CHAIRMAN FULD: Dan.

COMMISSIONER LACY: Just to clarify my own understandings, I had been under the impression before this afternoon's testimony that we really had more guidance in the Law and the Committee Reports on some of the questions on which we have discussed the need for additional guidelines, particularly in-house copying, than may be the case. And I also had the impression that there was much nearer mutual acceptance between librarians and publishers and authors as to what they meant on the in-house copying, for example. It does not seem to me that we are in any sense in a wide open situation, putting the law and the Commission reports, Committee Reports, together for a moment, while recognizing that they are not of identical force. Clearly making one copy of a journal article for one user, absent its being a part of systematic copying, would be permissible under 108, but making multiple--i.e., more than one copy--of the same article for the same person, clearly not. Making

one copy each for a number of people under a concerted arrangement, as when each of the members of a class comes in and individually asks for a copy, clearly not permissible, systematic copying being defined in some detail by example in the Committee Reports. True, two of those three examples, consortia and the NLM case have been lifted out by the different definition, by the exemption from the systematic ban on interlibrary arrangements that did not go to the point of replacing a subscription. But the NIH type of definition of systematic copying is clear and, I take it, accepted by libraries. So that as I understand it, libraries would agree that they may not, under the law as it comes into effect January 1st, without permission make more than one copy of a journal article for a user, make one copy each for a number of users whether the library has reason to believe that there is a concerted action, cannot systematically engage in a program under which they are avoiding subscriptions by systematically supplying members of a faculty or members of a student body under some profile and use system and so on with copies, and that the only thing they have got a clear right to do is when a user comes and wants a copy of an article for his own use, to give it.

I am not clear that there is a wide area of kinds of copying that do not fall under either of these permissions or those bans on which there is a tremendous amount of

disagreement and, if there is, I am not clear how we would realistically put it into guidelines. What kind of guideline could we have that would be more specific, more objective, more numerical and still be permissible as an interpretation of the language that is in the statute and a clear part of Committee's Report? I am troubled as to how we would proceed on that point. And I do not perceive that there is quite the absence of a good faith intent to abide by those provisions.

MR. LIEB: I think the soft part was in your last example. I can think of two examples, two things that require solution. First, accepting that the requesting student who comes in is coming in for the first time and they never see him again, I think a point comes when the library, having been requested x-number of times in its premises for a copy of a particular journal, is systematically copying. I think that indeed there had been suggestions to discuss a guideline as to the number of times in the course of a year a library might copy from what it has in its possession.

A second example of where I think a guideline might be helpful comes in connection with what Irwin Karp termed-- and I agree with his terminology--this new classification of intralibrary system, which is something that I had never heard before. We have heard discussion about whether on the same campus if some of the books are on Elm Street and some of the other books on Chestnut Street, is that one or two

libraries? But my perception is--and I have read it--that many libraries are now asserting that they belong to large intralibrary systems, and I think that we need to know when is a library a library and when is it more like a consortium. What is a library which can do copying within limits for its own patrons, and when has it split itself off into multiple libraries, so that the same tests should apply to each multiple location?

COMMISSIONER LACY: Charles, let us go back to the first case, not the intralibrary one--it is intrasystem, which I realize has problems. One could of course feel that it is unfair, it is bad, it is wrong that if an article is so popular that a hundred students during the course of a year--and grant for the moment it is quite spontaneous and individual, there is no concerted^r action--come in and get a copy and the law ought to forbid it, but in point of fact the law does not forbid it. It says you can make one copy for each person if it is not "systematic"--and they define what they mean by systematic. They are not just meaning numbers. They mean a system is set up for doing it. And where there is no evidence of concerted arrangement. I do not think we can amend the law with the guidelines, however unfortunate, and I think some of the law is unfortunate. But I feel sort of constrained about what we can do with guidelines.

MR. LIEB: I do not say that I am right. I am certainly not saying that you are wrong. But I think that it is questionable. But I want to add that there is a new element that is added. Up to now, when we have been talking about guidelines and what can be copied, we have been saying in substance, underlying the discussion is, "Well, if we cannot copy it, there is no way that we can get access to it for our patrons because there is no system set up for clearance or permission and no system set up for payment, even if we were willing to make payment." This discussion now has to be related to the Copyright Clearance Center, which is in existence. And in my hypothetical case, where 200 different students come in in the course of a given period and ask for a copy of the same periodical, I think that at a certain point that library, having only one copy in its stacks, should start making payment through the Copyright Clearance Center.

COMMISSIONER LACY: It certainly begins to approach the NIH thing at a given state. But my guess is that in any numerical fixed number that one put in--100, 97, 212--you would find that either it touched only a tiny fraction of the cases or that--well, it would begin to be an awfully difficult guideline to administer. I am just troubled with guidelines on that particular point which looks much more complicated to do than others.

CHAIRMAN FULD: Professor Nimmer.

VICE CHAIRMAN NIMMER: Mr. Lieb, I am somewhat surprised that neither the authors nor the publishers seem to be concerned about--or focused so exclusively on library photocopying, almost to the exclusion of other kinds of photocopying. I mentioned in my questioning of Irwin Karp about the photocopying mills, and I wonder whether it is sufficient to rely upon the traditional one lawsuit against one given defendant in that context. I do not know. But another aspect--do you not have any concern--if we are thinking about the long-range future, as I think our Commission must be concerned with, is there not a real possibility that within the next 20, 30 years every person who now has his own audio tape recorder or typewriter will have his own photocopying machine and with both technological quality improvement and reduction in current costs? If that is at least a possibility, should not we, should not you, be thinking about what is the copyright mechanism to be employed in those circumstances?

MR. LIEB: I think, Professor Nimmer, that of course it is a matter of concern. But for the first time we have an inner mechanism that will call for periodic reviews. In the past the concern always was once you get a copyright law, you have it for 75 years. But we have a five-year review period. And as these problems arise, presumably they

will be considered. I just do not think that, as desirable as it might be, I do not see how it is possible to cope today with what is going to happen tomorrow.

CHAIRMAN FULD: Any other questions?

COMMISSIONER LACY: I have one other that I do not know whether Mr. Lieb would prefer to answer or Mr. Harris.

In the library testimony this morning there was a suggestion of services that librarians would recognize as reasonable. Indeed, I took it that they to mean would welcome publishers or their private enterprise licensees offering a number of additional services and supplying copies of material, presumably under license, on which they would be prepared to pay an appropriate service cost, and they would encourage a more active participation in the publishing community to speed up and increase the availability and reliability of copies, thus lessening the need for interlibrary photocopying. Do you think it would be possible to give further thought--I realize the difficulties of the antitrust law at this point--as to what could be erected as a private enterprise alternative to interlibrary photocopying?

MR. LIEB: Not so difficult. As I heard Frank talk this morning and give those examples, it occurred to me in each of those instances the Copyright Clearance Center will be functioning to produce the result that he wants. For example, I said before that organizations of middlemen are

eagerly looking forward to enter CCC because they will be able to take advantage of the automatic copying license. It seems to me that in each of those three examples that was mentioned this morning, if there are enough journals, publications, that are in the system, the libraries will be able to go to a document, ^{supplying} or finding organization and say, "Get me or give me a copy of that." And the middleman will make the copy either because he has it in his own stacks or will go to the library to make the copy, take advantage of the automatic licensing provision, and pay the fee. So, I believe that that is part and parcel of what is being offered in CCC.

MR. LACY: CCC would certainly facilitate the payment aspect of it. It would not per se do the actual provision of copies. But it might encourage more investments--

MR. LIEB: It makes it possible for the middleman to make the copy--that is his business--to make the copy, pay CCC the required fee, and send a copy to the library.

CHAIRMAN FULD: Mr. Harris.

MR. HARRIS: I would comment just very briefly on some of the data in the King Report, with a caveat that it was only this morning that we saw the final version of the King Report. I have had the benefit of seeing earlier versions but not had the opportunity yet to check them

against the final version.

The comments I make have only to do with certain quantitative data and not on interpretations of the law made in the King report which affect very significantly some of the data presented within it. That we will be prepared to present a statement on later.

The first is in regard to the extent of photocopying. It is very obvious in the King Report that there is an enormous amount of library photocopying. It amounted to in 1976 either 860 million pages, as stated on page 27, or 906 million pages, stated on page 29. I do not know which page is the valid page. Of that amount, 56 percent of all identified material--that is, identified as either being copyrighted or not copyrighted--was copyrighted material. And I think that is a very important fact because of the contention often voiced that the largest bulk of photocopying carried out by libraries was of material which was not copyrighted. And I would like to repeat it, that 56 percent of all the material photocopied by library staff, 56 percent was copyrighted material.

In arriving at certain of the data in the King Report, 17 percent of the respondents said that they did not know whether the material was copyrighted or not. All of that material was treated as if it were not copyrighted, which I submit is quite wrong. That material should have been

discarded from the quantitative data presented in the report. Therefore, quite a bit of the quantitative data would be higher if one were to assume that of that 17 percent of don't-knows, some proportion of that was copyrighted. So that many of the figures in it underestimate, perhaps not in a very significant way but nevertheless underestimate, the amount of photocopying of copyrighted materials.

Similarly, as Mr. Karp pointed out earlier, King estimated that one half million copies were made for inter-library loans of copyrighted materials in 1978, which were beyond legal limitation. That has become sort of a magic figure. Everyone says that a copyright clearance center would be dealing only with a maximum of a half a million transactions. That is by no means the case. As Mr. Karp mentioned, the materials above five years old amount to 1.4 million. So that if you took all the materials which are copyrighted and for which payment would have to be made, the total would be 1.9 million. And I submit that there is nothing in the CONTU guidelines or any other place which takes out of copyright material which is five years old. There are simply no guidelines on that material; copyright exists. And, therefore, that material must be contended with and considered as copyrighted material for which no one has a legal right to exceed the limitations of copying prescribed in the guidelines. That, incidentally, goes to the point of

how misleading some material may be, because in this morning's testimony, the librarians made much of the fact that a great deal of photocopying, or the preponderance of photocopying, was done to material within recent publication.

In the case of the serials identified by Mr. King the reverse is true. There are more copies that are more than five years old than were copied of materials which were five years and less, according to the data in that report.

Something has been said about cases of companies who are in the business of making photocopies. Some of the companies who make photocopies engage in research and provide photocopies as a middleman's enterprise. That was not included, by definition, in the King study, and I mention that as just one example of photocopying which is not covered by the study.

We know of a case of a single company which desired to pay through the copyright clearance system for photo-
and
copying, which estimates that in the year 1976 it made 56,000 photocopies for which it would have to pay. And there are any number of instances of companies of that kind, the volume of which would add substantially to the total volume which would be handled by the CCC.

I would like to make one final comment. If one just looks at the total effect of the report, it shows that there is an enormous amount of photocopying done by libraries

and that a very substantial portion of it is perfectly legal. The argument has therefore been made that what is left is de minimus and why worry about it? Why create a copyright clearance mechanism or any other mechanism to cope with it? The argument works in our case, as a publisher, the other way. The only protection that is left to us that protection which is provided in 108, which limits the amount of photocopying by libraries. And unless some mechanism of this sort were set up or unless that protection were retained, there would be virtually no protection left to a journal publisher. And with that anyone could become a republisher, and the entire financial liability of journal publishing would be destroyed. That small amount, in proportion to the total, is vitally significant to the economic well being of journal publications.

MR. LIEB: May I add--Mr. Hoopes has called my attention to the fact that I omitted to mention the submission made by the National Technical Information Service this morning in which NTIS indicates that it sees nothing incompatible between its proposed service and provision of photocopies and the operation of the CCC. And also they state that they think it very likely that where publishers have not negotiated a license directly with NTIS, then NTIS will in effect clear the copying that is requested by its customers through CCC and pay the publisher the fee, copying

fee, through CCC.

I want to say that at a previous session we opposed the--AAP opposed the NTIS proposal because we felt that in effect it was forcing unilaterally a procedure on publishers which was unfair. We are happy that NTIS has modified its proposal and happy too that they will clear through CCC, which should make CCC even more viable than otherwise there was reason to believe at the beginning.

I did ask for leave to submit a written statement.

CHAIRMAN FULD: Yes.

MR. LIEB: Thank you.

CHAIRMAN FULD: Mr. Ben H. Weil, while on leave from the Exxon Research and Engineering Company, served as a consultant to the AAP on formation of the Copyright Clearance Center. Mr. Weil, who also appeared before the Commission in January and April of this year, will present a progress report on the status of the Clearance Center. Mr. Weil.

STATEMENT OF MR. BEN H. WEIL, VICE PRESIDENT
AND SECRETARY, COPYRIGHT CLEARANCE CENTER,
ACCOMPANIED BY MR. DAVID P. WAITE, PRESIDENT,
AND MR. MICHAEL HARRIS, CHAIRMAN OF THE BOARD

MR. WEIL: I am going to be joined by Mr. David Waite, who is the new president of the Copyright Clearance Center, and by Mr. Harris, who is the Chairman of the Board. In addition to my statement I am submitting for inclusion in the record the Copyright Clearance Center handbook for publishers and for libraries

and other organized users.

We appreciate the opportunity today to make a progress report or, in essence, a description of an entity which is now in existence and which we have given you preliminary plans at your session on March 31st. I apologize for my voice. I am recovering from a heavy cold.

The center, the Copyright Clearance Center, Incorporated, has been incorporated in the State of New York in July of this year as a not-for-profit organization which has its administrative office in New York City and, because our contractor is there, an operations office in Schenectady, New York. Beginning on January 1, 1978, we are going to be in a position to provide organizational users of document copies with a convenient centralized mechanism for payment for the preparation of needed photocopies which otherwise would fall outside the provisions of and the guidelines for the new copyright law.

This mechanism will be needed by many libraries, library consortia, information businesses, access services which prepare alerting and retrieval guides, including tables of contents, and back these up with photocopies on request--and, by the way, this was not a type of organization which was described previously, but it is an existing type of organization which exists in manifold and which does provide copies, many of which would fall outside the law--and various other photocopying organizations. For many of these

will be a cost-effective alternative to seeking direct licenses for copying from hundreds or thousands of serials, although that route will still be open to them because the Center is simply an additional mechanism. It does not replace the permissions programs of publishers or any other means through which copying organizations can obtain permission to make copies.

As you know, the Center was planned by a task force of the Technical, Scientific, and Medical Division of the Association of American Publishers, with the cooperation of the Information Industry Association, the Authors' League of America, and representatives of scientific societies and independent publishers. And also we have received advice and guidance from other organizations.

I may add that essentially I am now back at Exxon Research and Engineering Company, since Mr. Waite came aboard as president on October 1st.

As you also know--and I reported this on March 31st--the Center was not planned in a vacuum. Another way of saying it is we do not claim any credit for ingenuity. The features of the Center are based on studies which are made and alternatives which are proposed several times over in the Conference on the Resolution of Copyright Issues, the Cosmos Club effort, the Dumbarton Oaks group, which have been reviewed pro and con many times over the recent years.

Our contribution, if any, was to pick those piece from it which made sense against other alternatives and would provide a viable and cost-effective mechanism. And this route which we took is the direct transaction route, payment for specific photocopying done, and it was selected for several reasons.

First of all, of course, it is the most exact route, channeling payment in direct proportion to use. Because charges are specific, it is easier to pass them along to direct users where mechanisms exist to pass them along. I may add in Exxon Research we have such a mechanism.

Also we realize that one of the simpler alternatives adding one or more increments to subscription prices to license photocopying, would inevitably have several harmful effects: Further erosion in subscriptions because of inflexible library budgets and greater difficulty in passing along the higher costs to copy users. It is very hard to pass along subscription costs. And consequent reduction in local collections and direct service to the local users. Other pros and cons are available in those documents and studies which we mentioned.

We have noted some comments in presentations and elsewhere--not today, we are glad to note--to the effect that our system will be uneconomic and therefore socially undesirable, that it will take years for the Center to break

even, and that it will therefore be a financial burden to libraries without benefiting copyright owners. We are glad, therefore, to be able to report that based on our administrative budgets and our three-year contract with our systems operator, the Center has been able to set a 1978 handling charge--to be deducted from stated copying fees, not added to them--of 25 cents per article copied. This charge does not include much amortization of approximately \$200,000 for design setup and initial operating costs, but these would have added at most a few cents per copy if they had had to be amortized over five years. Instead, most or all of this \$200,000 will have been funded by contributions from concerned organizations. And even the present handling charge can be reduced when transactions exceed the very low basis which we have used for calculations: one million copies reported per year. They certainly fall somewhere in the range of the lower part of the estimates that we have heard discussed today. I may add if it were two million, the costs could go down about a third.

In addition, the system has been designed to minimize incremental internal costs for users. Some preliminary studies indicate that these should approximate ten cents per transaction for manual methods of reporting. There are several methods of reporting, two of which at least are manual. One of them is computer based. We doubt that these

handling costs could be considered a social disaster.

Another misapprehension about our system is that it will slow access to information--to the copies needed by users. I do not need to go into that. I think it has been made clear by other speakers that the reporting of copying for which payment is to be made is done after the copies are made. In other words, the alternative that a library or other organizational copier has to make is between not doing it, if it is not permissible under the law, or paying; and if a decision is made to pay, the copy is made and then the report is made.

Early in the planning of the center there was a time when it was envisioned that organizations could or should report their Section 108 or 107 fee-free copying. It was envisioned initially desirable in order to provide research-valuable records of total photocopying, but it was quickly evident that the Center could not afford to process entries that would yield no revenues, and that some libraries did not desire to do this.

I may add that the systems of the Center are such that if a library did wish to use the services of their contract operator on a proprietary basis, this is not through the center itself, that the programs are available for it to do so, if it wishes to get auxiliary reports. Also the quantity discount fee because our costs go down the more

entries that are processed. So, this is open to the libraries but only on their own initiative and not through the Center.

The center recognizes, of course, that it provides a direct answer to only one copying need of users--the need to be able quickly to make fee-required copies of documents available locally. And as the point has also been made, users also have a need for copies of documents that are not at hand. But here also the Center will be of service. As Mr. Lieb has pointed out very clearly, it will provide a mechanism for payment by suppliers of copies for which fees are required, suppliers which are not directly licensed by the individual publishers.

Conversely, we have pointed out to publishers that licensing copy suppliers as the only means to serve copy-reading users, without making local copying possible, would fail to satisfy users' very real needs for speed, and would inevitably have a deleterious effect on local subscriptions. Both types of copying are needed, local copying and the availability of copies of documents which are not available locally in an expeditious manner.

The procedures of the Center have been detailed in two handbooks, which are attached to this presentation. One of these provides the publishers of serials and separates with the basic information on how to make copying of their articles accessible through the Center. This was produced in

August because the publishers were at that time already beginning to plan their 1978 publications.

The other provides libraries and other organizational users of copies with information on how to register with, report to, and pay through the Center for their fee-required photocopying. This second handbook, which is available in a rather proof form--it soon will be a folio book--is presently at the printer, and we will be distributing it and announcing it broadly to libraries and other organizational users by or before early November. These are today the first copies that have been released, although a draft of this copy was sent in the quantity of some 500 to people who had asked to see it and also at a workshop/forum which was held at the American Society for Information Science meeting which was attended by some 250, 275 people and in which I was glad to receive--comments were requested--I received helpful comments from some 20 or 30 of the librarians and other interested parties present.

I may also add, as an addition to this report, that help was received from librarians at all stages of this project, not in a concerted manner but in an adequate manner to indicate that what we were developing had some applicability and some practicality.

In this system--and this is just a brief summary--each individual publisher sets its own article copy fees, if

any--some are not setting fees--and in 1978 will usually begin to state these fees on the first pages of articles as part of an article-fee code. The center will publish lists of participating publishers, including stated fees, if any, for the copying of pre-1978 articles.

Use of the services of the Center involves user-organization registration with the Center's operations office to obtain a CCC user-registration number for use in reporting copying and to receive Center lists and publications. This registration is not as awe-inspiring, as formal, as some people may lead you to believe. It simply gives an address to which bills should be sent and in turn gives us a user-registration number, which in turn the user will put on the reports to the Center. There are no other requirements; there is no registration fee.

User reporting of fee-required copying is normally done monthly in a variety of ways--and the handbook states what some of these ways are, and we are open to others--including sending in marked reporting copies of the first pages of articles marked; completed data logs--we have forms that are suggested and we welcome others--or, through copy-supplying libraries, which receive them or are willing to receive them, marked copies of the new interlibrary loan form, simply marked to indicate where payment is required that the requesting library is willing to make such payment.

Payment methods include deposit accounts. I would like to submit a typographical correction. This says "discounts." It should have been "accounts." Billing and possible pre-payment through use of stamping meters or stamps.

Some information about the organization of the Copyright Clearance Center itself seems indicated. Its charters and bylaws were drafted by representatives of the Association of American Publishers, the Authors League of America, the Information Industry Association, and independent publishers, and these four groups also recommended much of the initial Board of Directors. The bylaws call for a sizable advisory committee--up to 27--which may attend all board meetings and which may later recommend representation selection of the next board. In fact, that is one of the tasks of the advisory committee.

The Center's Board of Directors, which includes leaders from the publishing, scientific, and academic communities, was formally elected at the first board meeting on September 1st. The Chairman is Michael Harris, Vice President, John Wiley & Sons, Incorporated. Vice Chairman is H. William Koch, Director of the American Institute of Physics. I am the Vice President and Secretary, as a senior staff advisor of Exxon Research and Engineering Company. Treasurer is James Barsky, Senior Vice President, Academic Press, Incorporated. Other board members include Garth Hite,

Publisher of the Atlantic Monthly; William McElroy, Chancellor of the University of California at Los Angeles; Barbara W. Tuchman, author of the Guns of August, Proud Tower, and numerous other books; Norman Garnezy, Professor of Psychology at the University of Minnesota was named to the eighth position on the board at the board meeting on September 21st.

Nominations for the center's advisory committee were approved on September 21, and so far the following members have indicated acceptance of nominations: Tony Bearman, National Federation of Abstracting and Indexing Services; Kathleen Bingham, FIND/SVP; Christopher Burns, Arthur D. Little; John E. Creps, Jr., Engineering Index; Donald C. Curran, Library of Congress;

Eugene Garfield, Institute for Scientific Information; Eugene L. Hess, Federation of American Societies for Experimental Biology; Townsend W. Hoopes, Association of American Publishers; Irwin Karp, Authors League; Bella Linden, Linden and Deutsch; William A. Nasri, University of Pittsburgh; Charles Overberger, University of Michigan; John Rothman, Gerald Sophar, National Agricultural Library; New York Times; Lewis L. Snyder; and Paul Zurkowski,

Information Industry Association. Two or three more remain to be named in the very near future, and some positions are being held open against rotation.

The Center has selected Finserv Computer

Corporation of Schenectady, New York to serve as its operational contractor. Finserve, which was chosen from among seven bidders, will operate with cooperation from Bibliographic Retrieval Services, Incorporated, also of Schenectady. Thus the Center's operations office will be in Schenectady. And, as I reported before, the Board has chosen Mr. David Waite as the Center's President, its chief operating officer, effective October 1st. And Mr. Waite has, at that point, taken over from me.

This September the US Justice Department issued a Business Review Letter assuring that the Department will not raise antitrust objections to the establishment or operations of the CCC. We appreciate the letter which the Commission sent on the appropriateness of this effort.

Work is in progress on scheduling of the details which remain ahead. Pilot runs are scheduled at appropriate times on all of the operational programs of the contractor before the end of 1977, although no input data is actually expected, of course, until some time in February. Lists of participating serials will be published before the end of this year so that user organizations will know the coverage of the Center, and supplements will be issued frequently. Naturally, concentrated efforts are underway to assure maximum publisher participation in the Center's programs. And I want to assure the Commission again that although the

effort was planned by the Scientific, Technical, and Medical Division of the Association of American Publishers, it was at all times open to the broad community of publications, and strong efforts are being made to assure that they participate and that indeed they actively participate. As you will have noticed, Garth Hite of the Atlantic Monthly is a member of the board and is certainly from not the scientific and technical community.

Representatives of the Center are participating in numerous workshops and meetings to explain the services and operations of the Center.

One last point which we are certain that you recognize. Copyright Clearance Center is open for service to all authors and publishers and to use by all types of copy-using organizations. It is designed to serve both groups and as such cannot be an interpreter of the copyright law or its guidelines. We note, however, that users are raising many questions--and we certainly heard this discussed today--and we believe that more exact guidelines and definitions would be of real service.

We have appreciated this opportunity to bring the Commission up to date on the Copyright Clearance Center in much more detail than the brief statement which we filed at its last meeting. We firmly believe that the creation of the center is a responsive answer to the challenge posed by the

Senate in its 1975 report: The recommendation to authors, publishers, and others concerned that "workable clearance and licensing procedures be developed...concerning library photocopying practices not authorized by the new law."

I would be glad to answer any questions.

[Written statement with two attached handbooks follow as Appendix C.]

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CHAIRMAN FULD: Yes, Mr. Frase.

MR. FRASE: This is a relatively small matter quantitatively, but I am wondering what publishers will do in their catalogs, setting prices for copying from back issues, about the fact that very few periodicals have been renewed for second term copyright. So, a lot of older material is really out of copyright in journals.

MR. WEIL: It would have been very helpful for us to have included a request that would help to delimit that in the handbook we made for publishers. And since we will be issuing supplements, that is I think something we should address to publishers because that kind of information as to what is in copyright I think is helpful. In fact, one or two of the reports from journals that have come actually have stated what the date is in which copyright begins. That means it will have to be revised every year. But I think that would indeed be helpful to users. I have made a note of it, but I will make another one.

CHAIRMAN FULD: Any other questions?

COMMISSIONER WILCOX: Yes, Mr. Chairman.

CHAIRMAN FULD: Yes, Mrs. Wilcox.

COMMISSIONER WILCOX: Mr. Weil, do you see this as an intermediary step? The reason I ask this question is because we have heard about another system for technology which might package information in a new way. And if the

intent is to collect royalties on all uses of materials, this only addresses part of the royalties. So, I am wondering if you think the new, different, technologies will outdate your system.

MR. WEIL: I have no doubt that there are better ways of doing this. We hope to improve the technology of the system if the system itself remains a mechanism. And if you are referring to the fact that books are not initially included, the book publishers did not request that. The present system would only partially encompass it. But we believe it could be expanded.

COMMISSIONER WILCOX: Specifically what I was referring to would be publishing on demand and therefore having--

MR. WEIL: Publishing on demand--I think I mentioned that this does not supersede or replace or prevent any other mechanism. In other words, another way of putting is I believe this is a lead-in to what you are referring to; the day of the separate, which is publishing on demand, if you want to put it that way, is very likely to come, and this is a step towards that in that it makes the separate a legitimate and not limited mechanism, limited to the extent that you could not do it because the law did not permit it. Yes, I think the day of the separate will come. But who will be the node on the network and so on? I think this is the

type of exploratory information which I understand some of you--Mr. Perle, for example--were mentioning in terms of what is the future 15 years from now, which one can only speculate on. But one certainly would think it would develop in that direction.

CHAIRMAN FULD: Mr. Wedgeworth.

COMMISSIONER WEDGEWORTH: Mr. Weil, I was interested in seeing that the Center is going to be working with the other service agencies that provide actual copies ^{to} users and user organizations. But do you know as of this date, taking the example that was given by Dr. Garfield and his service, working together with the Center, for example, or some other similar service agency, the 25 cent fee that you quote, would that come out of that 60-cent royalty fee, or would this be added on top of the cost of the article?

MR. WEIL: It comes out of whatever the fee is that is set by the service that is supplying the copy.

COMMISSIONER WEDGEWORTH: So, in that case, it would be--the 25 cents would be kept by the Center from the 60 cents, the balance going to the proprietor?

MR. WEIL: Whatever is paid into the Center, the 25 cents--in other words, whatever the publisher has requested--

COMMISSIONER WEDGEWORTH: As a royalty.

MR. WEIL: As a royalty--before it is transmitted

to the publisher, the processing charge is taken out.

COMMISSIONER WEDGEWORTH: Would be deducted.

MR. WEIL: Yes.

COMMISSIONER WEDGEWORTH: Yes. All right, thank you.

MR. WEIL: This is something a lot of people have some trouble understanding because it sounds like a fee. We are trying to use the word "handling charge." I did use the word "processing fee" at one time. It is a handling charge, and it is a handling charge which is deducted before it goes to the publisher, before the proceeds go to the publisher.

CHAIRMAN FULD: If there are no other questions, thank you very much.

Before we adjourn, we will hear Dr. McKenna or one of his associates very briefly.

DR. MCKENNA: Yes, thank you, Judge Fuld. Our comments will be very brief.

Our first comment is that we have no comment on Mr. Karp's remarks. We do wish, however, to state that Mr. Lacy's interpretation of the library statements this morning was exactly correct when you asked or indicated there seemed to be a difference of statement this morning and interpretation this afternoon. And in order to emphasize that, I would like to read three sentences from the document

which we indicated is in preparation with the proposed title of "Proposed Copyright Clearance Procedures for Photocopying."

"A library whose users require a large number of photocopies may wish to consider a centralized service for copyright payments. Two such services have recently been proposed, and others may appear in the future. One is the Copyright Clearance Center, incorporated by the Association of American Publishers; and the other is a program for supplying photocopies of journal articles developed by the National Technical Information Service. As AAP and NTIS work out the details on how the respective services will operate, librarians will be able to assess their respective merits."

It is not our intent that librarians should not use any center that may develop.

In regard to Mr. Lieb's comments along the line that librarians had to be dragged to the negotiating table, such remarks have been made on numerous occasions, and I think it is appropriate to note that in July, 1974 the American Library Association adopted a resolution requesting the Register of Copyrights to call together the conference which became known as the Conference on the Resolution of Copyright Issues, or Upstairs/Downstairs Group. The working group of that conference and its numerous technical committees met on

many, numerous occasions over a period of approximately two years. There essentially were no negotiations because--or at least any negotiations in the sense that I have been involved with negotiations. It seems that the libraries should move a hundred percent toward the position of the persons with whom we were discussing. As a result of that, the Library Associations recommended what has now become Subsection 108(i), and 108(i) is essentially word for word for the five year review as we recommended it.

Professor Marke is with me because he wishes to comment on two matters.

DR. MARKE: Very quickly. I am pleased to say for the record that I am a friend, a good friend of Mr. Lieb, Charles Lieb. I respect his professional integrity and his competence. The statement that he referred to that I made is a true statement. But you should recognize the context in which it was made. At that time he had been discussing the Section 504 of the Act, that librarians should not feel secure that Section 504, which dictates that the courts should remit the statutory damages of a librarian--believing his or her photocopying of protected ^{work was} ^{be} _{thought to} fair use--was a complete defense. And then he mentions the fact that, like the dog, the librarian would be entitled to only one bite and similarly that Section 505 provides for assessment of attorneys' fees in the matter. So, I replied in that

context, that every case involving fair use would be based on the facts of the case. And it would not be reasonable interpretation to assume that 504 or 505 would be interpreted by a judge as permitting the remission of the statutory damages and then on the other hand saying that "But on the other hand, you are going to pay the attorneys' fees." And I said I would go to litigation in this matter and in this context.

I then would just like to call one more fact to your attention. Mr. Lieb refers to a letter of Senator McClellan. I had occasion this morning, yesterday morning, to discuss this letter with a very distinguished federal district judge in New York. I will not mention his name at this point. I am prepared to mention his name off the record to the Commission. This statement has been made before. In fact, at that Thursday meeting that we had in Michigan, Mr. Lieb referred to that letter and cited it.

I mentioned this to the judge and asked him what his thought was with reference to such a letter as to its value as a precedent or value as authority of any sort. And he said he was appalled at the thought that such a letter should be considered as evidence of congressional intent. It would set a--quote--dangerous precedent--unquote, especially when the letter's contents and directions were not subject to examination and review of the other congressional members

of the Senate committee. To allow this practice would permit congressmen to take care of special interests without proper control.

DR. MCKENNA: Thank you very much. That concludes our remarks.

CHAIRMAN FULD: Thank you.

Yes?

MR. DOUGLAS PRICE: Judge Fuld, if I may make one very short statement. Douglas Price of the National Commission on Libraries and Information Science.

CHAIRMAN FULD: Yes.

MR. PRICE: With respect to Mr. Harris's comments on what happens if you put the over-five-year - old^{copies} back, and you come up with 1.9 million, an additional 1.4 million, there is such a chart in the King Report. Yesterday morning or afternoon I told them that I wanted some explanatory material moved closer to that chart. That 1.4 million hypothesizes that all journal articles over five years old would require payment of royalty. The phrasing used "eligible for payment of royalty." In this hypothetical situation that they all are, then you would add 1.4 million. I think this is obviously a false hypothesis and is so identified.

One more point I will make in defense of King. He deliberately, under instructions from the advisory

committee, avoided interpreting the law. That was the direct instruction of the advisory committee.

CHAIRMAN FULD: Thank you.

COMMISSIONER PERLE: Just to clear up an ambiguity in my own mind, Mr. McKenna--first, is your group ready and willing to sit down under the aegis of CONTU and talk about guidelines?

DR. MCKENNA: No.

COMMISSIONER PERLE: You are not?

DR. MCKENNA: No. We indicated that this morning, that we felt this was not--

COMMISSIONER PERLE: I seem to get a backing off from that position in response to Mister--

COMMISSIONER LACY: No, I did not say anything about the guidelines.

DR. MCKENNA: No, that was an interpretation of our remarks.

COMMISSIONER LACY: Participation in the clearing house.

DR. MCKENNA: But we indicated this morning that we did not feel that this was the time for the review.

COMMISSIONER PERLE: Does your group have any recommendations to make to this Commission as to any statutory changes or any regulatory changes?

DR. MCKENNA: Not at this time.

COMMISSIONER PERLE: Thank you very much.

DR. MCKENNA: I repeat that we mentioned this morning the five year review; when we approach that and we have a factual basis on which both sides can make more balanced judgment, then we will be ready to consider it if it is necessary.

COMMISSIONER PERLE: Finally, do you have any comment to make on the language in the Senate report and the extension of the Commission's life which refers to the Commission "to continue its work in assisting the various interests in the formulation of guidelines interpreting the library photocopying provisions"? Do you have any comment to make on that at all?

DR. MCKENNA: I think it is fair to say that we were all astonished to see that. You are talking about this most recent Senate--

COMMISSIONER PERLE: Yes.

DR. MCKENNA: That we were all astonished to see such a statement when apparently it was a simple matter of extending the life of the Commission for seven months.

COMMISSIONER PERLE: After you got over your astonishment, do you have anything to say?

DR. MCKENNA: We have nothing.

COMMISSIONER PERLE: Thank you.

MR. LORENZ: I would like to add this for the group,

and that is we felt that an agreement has been made. In other words, a long, long time in reaching the agreement that was arrived at. It is a little difficult to understand how one agreement arrived at after a long period of time must be based on another agreement being made just a short time later.

In other words, we felt that agreement was made for a five-year period, and we are ready to stand on that basis.

CHAIRMAN FULD: Did you have something to say, Mr. King?

MR. DONALD KING: Yes. Chairman Fuld, I am Donald King of King Research, Incorporated, and I would like to have the opportunity to submit a very brief comment on some of the comments that were made on our report, if I may, for the record.

CHAIRMAN FULD: In writing?

MR. KING: In writing, sir.

CHAIRMAN FULD: You have it.

We will now adjourn. Our next meeting is going to be November 17th and 18th, at the moment's plan, for Boston.

[The meeting was adjourned at 4:05 p.m.]

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Council of National Library Associations, Inc.

Founded: 1912

Committee on Copyright Law Practice and Implementation

A Statement Submitted to
The Commission on New Technological Uses of Copyrighted Works

October 20, 1977

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Members and Alternates of
CNLA Committee

Revised Interlibrary Loan
Form and "Copyright
Representation on the
National Interlibrary Loan
or Photocopy Request Form"
"Notices" Required by
Subsections 108(a)(3) and
108(f)(1)

Recommendations for Photo-
copying Record Maintenance
and Retention

Please address comments to:

Dr. F. E. McKenna
Executive Director
Special Libraries Association
235 Park Avenue South
New York, NY 10003

1. Introduction

The library community of the United States is pleased to have this opportunity to present this statement on copyright to the members of the Commission on New Technological Uses of Copyrighted Works.

During Congressional consideration of the revision bill for the new U.S. Copyright Law --- and especially during consideration by the Kastenmeier Subcommittee in the House of Representatives --- representatives of six major library associations in the United States worked together so as to include all common interests and mutual concerns for the users of their types of libraries. Because each type of library has a mutual dependence --- to a greater or lesser extent --- on all other types of libraries to provide services to library users, each association is concerned that every type of library be permitted equitable rights in the revised Copyright Law.

This presentation is made by representatives of the six library associations on the CNLA Committee. The Council of National Library Associations (CNLA) may not be familiar to all members of the Commission. Therefore it is appropriate to describe the membership of CNLA briefly.

In December 1976 the Council of National Library Associations (CNLA) established this Committee so that the interests and concerns of associations of all types of libraries and their users will be represented. There are, at present, 15 member-associations of CNLA:

- *American Association of Law Libraries
- *American Library Association
- American Society of Indexers
- American Theological Library Association
- Art Libraries Society/North America

(contd)

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Association of American Library Schools
Association of Jewish Libraries
Catholic Library Association
Church and Synagogue Library Association
Council of Planning Librarians

Library Public Relations Council
*Medical Library Association
*Music Library Association
*Special Libraries Association
Theatre Library Association

The members of the CNLA Committee are representatives from six associations: the five associations designated above with an asterisk plus the Association of Research Libraries.

The sixteen associations have a combined membership of almost 60,000. When allowance is made for overlapping memberships in more than one association, the total of individual members is approximately 55,000. We estimate that the 55,000 members represent approximately 21,000 libraries of all types (except school libraries). We estimate that the member-librarians and their libraries serve more than 190,000,000 library users in the United States.

Often it is not recognized that library associations are publishers in their own right. Library associations are, therefore, in a unique position because they are concerned with their own substantial publishing interests as well as with the more obvious concerns of library users, librarians and libraries. These publishing interests include both periodical and book publication programs. Three of the six persons testifying here today are directly involved with the publishing programs of their associations or with those of university presses. All have been authors of articles in periodicals (including non-library oriented periodicals) --- many for compensation. Some are authors or co-authors of books.

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All persons here today have extensive experience as working librarians at all levels of responsibility. They also have work experience in different types of libraries and in different subject areas. (Please see Appendix A for a more complete summary of each person's experience relevant to copyright interests.)

2. Libraries as Agents for All Their Users

Librarians represented by this committee consider libraries as agents of library users in the constitutional balance between creators and users which the Constitution states is the aim of copyright law. We stress this point in the beginning not because we are insensitive to the rights of creators of copyrighted works but because we believe the progress of science and useful arts is best achieved by the widest possible access to intellectual property.

It is important that we emphasize the need for equal concern and equal treatment of all copyrighted materials, regardless of their subject content. We feel that it is unfortunate that the STM component of AAP has repeatedly emphasized STM (Scientific-Technical-Medical) as the primary concern of publisher interests. Works of creative authorship as well as those in the arts, humanities and the so-called "soft sciences" must be considered on the same basis as works in the so-called "hard sciences." This was the position of the library component of the Working Group of the "Upstairs-Downstairs" Conference*, and it continues to be the position of the CNLA Committee.

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*Conference on the Resolution of Copyright Issues, jointly sponsored by the Copyright Office and the National Commission on Libraries and Information Science.

Libraries exist to serve their users. We, therefore, are concerned that the public interest be served and protected. When the 1909 Copyright Law was enacted, a Congressional document published at that time noted that copyright is purely a statutory right and is conferred "not primarily for the benefit of the author, but primarily for the benefit of the public." This in turn raises the question of how to insure ready access to all knowledge and at the same time to keep the economy free --- especially in view of the information explosion and the explosion of new technology. It is our understanding that there is one basic reason for the existence of the Commission on New Technological Uses of Copyrighted Works; that is, how both the rights of the public and the rights of the creators or copyright proprietors can be equitably served in a period of rapid technological advances.

In view of their professional commitment to serve all public interests, librarians submit that they have served the public well, and that they have done so within the framework of the Copyright Law as it has existed since 1909. They expect to continue to do so under the revised Copyright Law when it becomes effective on January 1, 1978.

The new law is fairly explicit about many rights enjoyed by the public --- especially as they relate to the photocopying of copyrighted works. Representing that public we had a part in developing important concepts relating to photocopying that are embodied both in the new law and in the guidelines developed to implement the law and accepted by Congress. In the twelve months since the passage of the new Copyright Law, we have been working with our constituencies in each library association to ensure an understanding of the new law and the statutory balancing of public and private rights which Congress intended to achieve.

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In the discussions of the CNLA Committee extending over many months, we have examined many studies and related documents. Almost every document we have examined has reinforced our view that services offered by libraries for their users have not harmed the rights of creators and/or proprietors of copyrighted works, but rather that the library services have encouraged that dissemination of knowledge which ultimately benefits all the interested parties, including creators and proprietors. Within this context librarians are preparing to adjust their operations to meet the requirements of the new law and to carry out their responsibilities under it.

We have been impressed particularly by study of the Australian copyright situation with its emphasis on making it easy for those engaged in spreading and/or using knowledge embodied in copyright works to respect copyright. It is appropriate to note here a quotation from the Report of the Australian Copyright Law Committee on Reprographic Reproductions, p.16 (Oct 1976):

"A library often finds it inconvenient or impractical, especially in the case of a journal, to permit a work to be borrowed at the request of a library user. A library user will often want to have his own copy of a journal article or part of another published work. Even if he is prepared to buy the journal or the whole work, he will often find that it is not available. Libraries are, in our view, properly regarded as information resource centres. The need for copying library material by or for users of a library would not normally be satisfied by the library purchasing additional copies of the works. Quite apart from the severe financial burden this would place on libraries, we are satisfied that it is not possible to predict user demand for particular works in advance in most cases. In any event, the needs of the user who may want to make notes on the copy or assemble it with other material, would not be met merely by the library having additional copies.

(contd.)

"It is our view that copying by librarians is analogous to copying by individual persons under the fair dealing concept, although in the case of copying by librarians it is considered desirable to have a separate provision rather than to allow the matter to rest on the general provisions of 'fair dealing'. For this reason we do not recommend that any provision should be made for remuneration in this class of copying."

This has been one of our principles all along, and we believe that the new law which embodies the fair use concept along with guidelines developed by the interested parties will be fair to everyone --- creators, publishers and users. In recent months some organizations have charged that the new law is ambiguous. We wish to emphasize in some sections that the law was achieved only after twenty years of efforts by interested and contending parties until mutual agreements based on compromise could be reached.

Librarians are therefore realistically preparing to operate within the requirements of the new law, to study its effect during the successive five-year review periods as mandated in Subsection 108(i), and then to assist the Register of Copyrights to develop whatever legislative or other recommendations that may be warranted. We feel strongly that libraries and their users should not pay for those photocopying rights which are already available in the new law. We must note our concern that some public statements about the need for payments of fees have not been completely accurate.

At this time (even before the effective date of the new law), we do not believe that additional guidelines or definitions are needed. We are not sympathetic to reopening discussions of the 1976 Copyright Law at this time for revision of its accompanying guidelines or definitions or for the preparation of new guidelines or definitions as they affect

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photocopying in or by libraries (the matter of greatest concern to the library community).

3. Role of Libraries in Implementing Compliance

We wish to cite specific instances of what the library community has been doing in preparation for the successful implementation of the new law.

We feel that it is appropriate to call to the attention of the Commission that the "statistical study of photocopying" was recommended by the library component of the Working Group of the "Upstairs-Downstairs" conference*. The recommendation was made so as to resolve disputes concerning the quantity of material photocopied. In fact this recommendation by the library component was the only definite product of numerous meetings of the Working Group and its Technical Committees. The recommendation was accepted by the publisher/author component who, at the same time, added an amendment so as to also provide for a simulation study of Royalty Payment Mechanisms. The library component accepted the amendment.

The recommendation was accepted by the Conference late in the Congressional deliberations. Thus the RFP (Request For Proposal) could not be published, nor the contractor (King Research, Inc.) selected, nor the study completed before the law was to be enacted. Therefore the library component of the Working Group recommended the five-year reviews that now are mandated in Subsection 108(i).

The library associations have been active in informing their constituents as to their obligations and rights under

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*Conference on the Resolution of Copyright Issues, jointly sponsored by the Copyright Office and the National Commission on Libraries and Information Science.

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the new Copyright Law. Shortly after the law was enacted, a special issue of the ALA Washington Newsletter was published containing an explanation of the law as it relates to photocopying in libraries plus reprints of relevant excerpts from the law and the accompanying reports. This issue of the Newsletter was later published by ALA under the title of The Librarians Guide to the New Copyright Law. ALA has also worked with NEA to produce a pamphlet entitled The New Copyright Law: Questions Teachers and Librarians Ask. SLA mailed the pertinent excerpts from the law and reports to each SLA member in Nov. 1976 --- less than a month after the law was signed.

Articles on the new law have appeared in issues of the official journals of several of the library associations represented here. Sessions with extensive consideration of the new Copyright Law have been part of the program at national conferences of the associations. (MALL, ALA, Medical LA, Music LA, and SLA in June and July 1977.) The Register of Copyrights and representatives of copyright proprietors were invited and did participate in these meetings. Local chapters of the associations represented here as well as state and regional library associations and many library schools have sponsored symposia and workshops on how provisions of the law should be implemented in libraries. A number of members of this CNLA Copyright Committee have been speakers and active participants at such meetings.

In January 1976, the ALA Interlibrary Loan Committee appointed a special subcommittee to revise the standard Interlibrary Loan (ILL) request form so that this form, which is also used for photocopy requests, can be used by the requesting library to indicate compliance with the CONTU Guidelines. Two check-off items have been added to the ILL form to facilitate transfer of this information (See Appendix B). Explanatory material has also been prepared: "Copyright

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Representation on the National Interlibrary Loan or Photocopy Request Form" (see Appendix B). The revision of the ILL form and preparation of the explanatory text have been completed with the advice and approval of the CNLA Copyright Committee.

Library supply houses have been notified so that the revised ILL forms will be in stock. The library community is being advised about the revised ILL form and how it should be used. A special pull-out section of the October 1977 issue of American Libraries included the form and an explanation of how to use the "copyright representation" required by the guidelines. A similar presentation will be published in the November 1977 issue of Special Libraries. These materials are also being published in the official publications of other library associations.

Both the CNLA Copyright Committee and the ALA Interlibrary Loan Committee responded to the Copyright Office's "Advance Notice of Proposed Rulemaking"* and "Proposed Rulemaking"** regarding the "Warning of Copyright" which is mandated by Subsections 108(d)(2) and 108(e)(2) to be posted in libraries at the place where orders for photocopies are accepted and to be included on the local order forms.

The CNLA Copyright Committee and the ALA Interlibrary Loan Committee have jointly developed recommended wording for the notice required by Subsection 108(a)(3), the "Notice" which must be included on the reproduction or distribution of a work (see Appendix C). The two Committees have also jointly developed recommended wording for the "Notice" required by Subsection 108(f)(1) for display on unsupervised photocopying equipment on the premises of a library (see Appendix C). These

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* Federal Register Mar 30, 1977, p.16838-39

** Federal Register Aug 17, 1977, p.41437-38

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recommendations will be disseminated widely to the members of the library associations by publication in their journals and by direct mailings as appropriate

The ALA Interlibrary Loan Committee with approval of the CNLA Copyright Committee has prepared recommendations and suggestions for the photocopying record retention required by CONTU Guideline No. 4 (see Appendix D).

Further, the text of a pamphlet is being prepared for distribution to members of the associations. We expect that its title will be Proposed Copyright Clearance Procedures for Photocopying: Information for Librarians.

We report these activities to the Commission as evidence that the library community has been and is diligently studying the new Copyright Law, has been and is evaluating the rights available to the users of libraries, and is actively planning for implementation of the new law. We have insisted that we do not wish to deprive authors and other creators of copyrighted works of any rights they will enjoy under the new law.

4. Photocopying by Libraries in the Public Interest

Library photocopying of copyrighted materials is subject to Section 107 (Fair Use) and Section 108 (Reproduction by Libraries and Archives) of the 1976 Copyright Law, as well as the so-called CONTU Guidelines, "Guidelines for the Proviso of Subsection 108(g)(2)." These Guidelines were developed for photocopies in lieu of interlibrary loans by CONTU with the advice and consent of publishers/authors and libraries. The guidelines were accepted by Congress and appear in the Conference Report (H.R. 94-1733, p.72-73).

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One must distinguish between two purposes of photocopying in or for libraries:

- 1) For libraries themselves, for example, for purposes of preservation or replacement of library materials formerly acquired; and
- 2) For users of libraries whereby the library is the agent for each user.

Section 108 clearly establishes those situations where libraries are permitted to make single photocopies of copyrighted works for purposes of the library without the consent of the copyright owner. The CONTU Guidelines establish those situations where libraries may make single photocopies of copyrighted materials (without the consent of the copyright owner) at the request of other libraries for users of the other libraries or for purposes of the other libraries themselves.

Sections of the Copyright Law relating to photocopying by libraries obviously reflect compromises on the part of both libraries and copyright proprietors. None of the interested parties was completely satisfied with Section 107, Section 108 and the CONTU Guidelines, but they do reflect an agreement and understanding under which the interested parties consented to abide for a period of at least five years. Subsection 108(i) specifically provides that:

"Five years from the effective date of this Act, and at five year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials and with representatives of library users and librarians, shall submit to Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users..."

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The CNLA Committee has noted with interest the results contained in the King Research Report*, especially that those data suggest no need, based on current library photocopying practices, for any additional controls or payments to be imposed on library photocopying services for library users. In fact, the reports substantiate the position of the library component of the "Upstairs-Downstairs" conference, that current library photocopying practices offer no threat to the economic welfare of authors or publishers.

The King Report shows that library photocopying of copyrighted serials under the CONTU Guidelines is a relatively insignificant fraction (500,000) of the total photocopying volume (114 million) in 1976. That fraction would become an even more insignificant fraction of the total had the number of photocopies permitted by Section 107 been separately identified.

The CNLA Committee has found no reason to criticize the statistical sampling by King Research. The voluminous data collected and reported require careful reading and study to fully understand the results reported. Although some bar charts are presented in the King Report, we feel that several graphic presentations prepared from the King data will allow a quicker comprehension.

To display visually the relative amounts of photocopying reported by King Research, we have reduced the narrative of a portion of the Executive Summary in the King Research Report

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*King Research, Inc. "Library Photocopying in the United States and Its Implications for the Development of a Copyright Royalty Payment Mechanism." Rockville, Md. (Sep 1977)

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(p.2-5 of the Draft Report, dated Sep 12, 1977) to the format of a bar chart (see Figure 1).

From Figure 1 it is more evident than in the narrative of the King Report that the amount of interlibrary photocopying of serials within the CONTU Guidelines is an extremely small fraction of the total number of photocopies or even of the number of serial photocopies.

Figure 2 demonstrates the rapid decline of serial transactions with increasing age of the serial with a levelling-off beginning 4 years after publication. The distribution of photocopying volume by age of serial publications is presented in Table 5.11 (p.134 of the King Draft Report, dated Aug 31, 1977). As an example, we have plotted the data for "All Libraries" from Table 5.11. The effect of age is more clearly evident in a graphic presentation than in the numerical tabulation.

The King Data for local users shows a pronounced decline from Year 1 to Year 4 (see Figure 2) with the beginning of a levelling-off from Year 4 to Year 5. A similar decline has been reported by other investigators in past years. (It is unfortunate that the King data for Years 6-10 and for Year 10 and older have been clumped so that our curve cannot be extended beyond Year 5.)

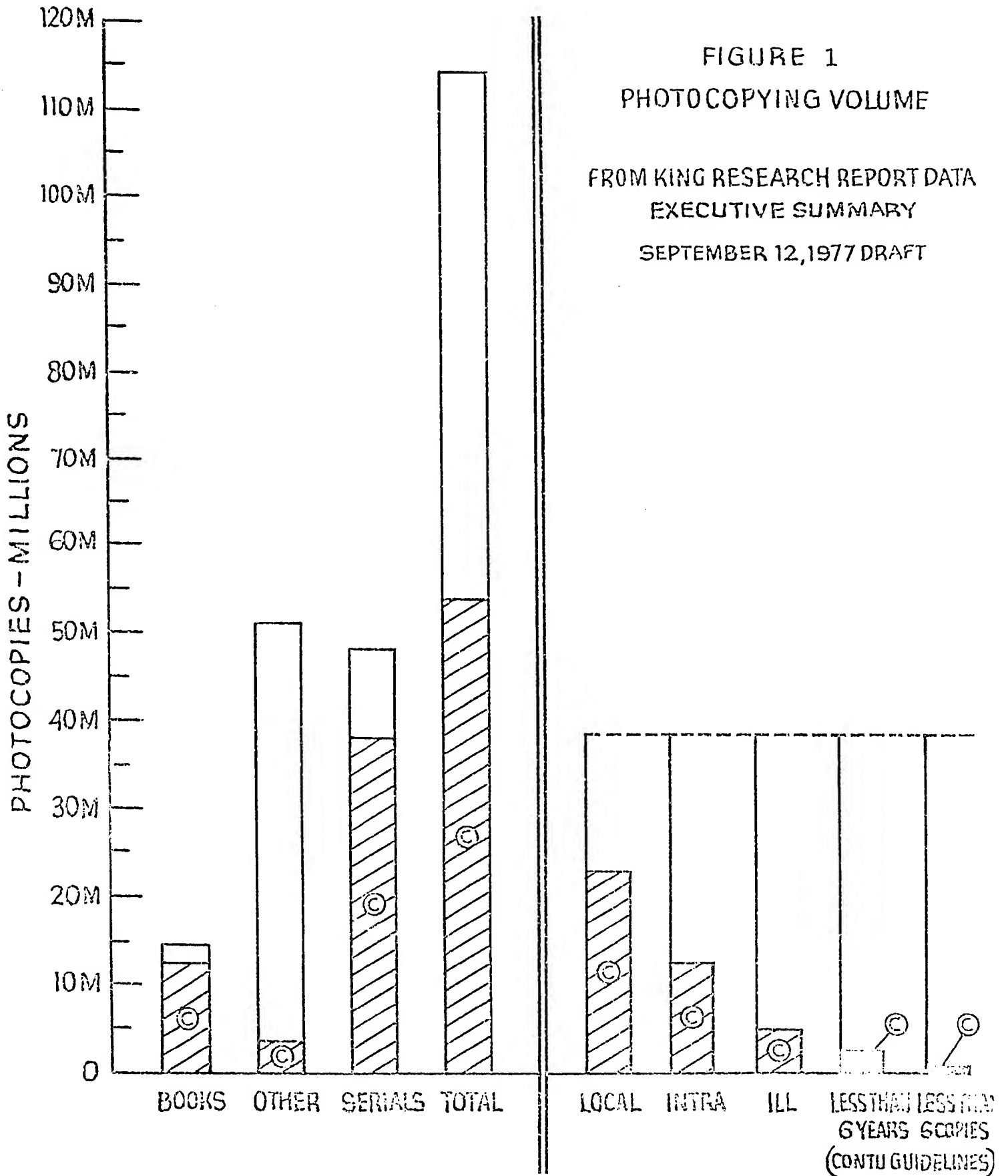
Within the accuracy of the data presented, the two allegedly different uses (intrasystem and local) fit the same curve. The CNLA Committee continues to deplore efforts to allege that intrasystem services are different from local services. We wish to point out that the virtual coincidence of the data points for these two allegedly different types of use supports our position that intrasystem services and local services are the same.

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FIGURE 1
PHOTOCOPYING VOLUME

FROM KING RESEARCH REPORT DATA
EXECUTIVE SUMMARY
SEPTEMBER 12, 1977 DRAFT



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The curve for interlibrary services shows a peak at Year 2 followed by a decline with additional age. A peak at about Year 2 has been noted by earlier investigators. The explanation that has been advanced is that 1-2 years elapse between the date of primary publication and the date of secondary publications (such as abstracts, cumulative indexes, references by other authors, etc.). The explanation seems reasonable. Local and intrasystem users will learn of publications in their own libraries. Users will not become aware of items in publications not received by their own libraries until the secondary publications appear. Then requests for photocopies of materials held by other libraries will occur.

Consideration of the curves in Figure 2 show that the existing CONTU Guideline No. 1(a) for material published within five years prior to the date of the request is adequate; and that there is no reason or need to extend this period.

We wish to note particularly several statements in the legislative reports that are overlooked by many parties. In both the "Guidelines for Classroom Copying"* and the "Guidelines for Educational Uses of Music,"**there appears the same statement:

"The purpose of the following guidelines is to state the minimum and not the maximum standards of fair use under Section 107 of H.R. 2223."

In the Conference Report the following statement refers to the CONTU Guidelines:***

"The conference committee understands that the guidelines are not intended as, and cannot be considered, explicit rules or directions governing any and all cases, now or in the future."

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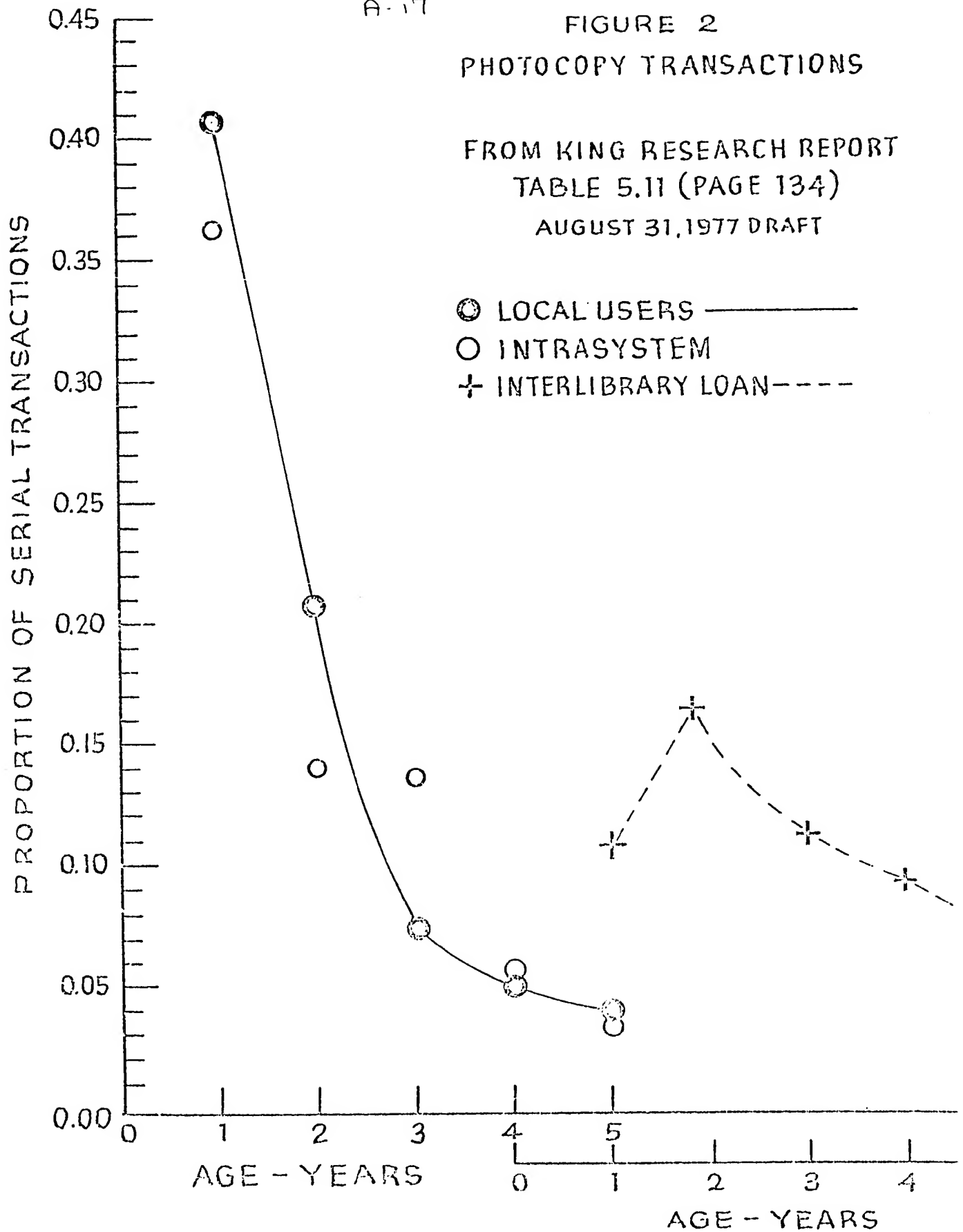
* H.R. 94-1476, p.68 (as corrected)
** H.R. 94-1476, p.70
*** H.R. 94-1733, p.71-72

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FIGURE 2
PHOTOCOPY TRANSACTIONS

FROM KING RESEARCH REPORT
TABLE 5.11 (PAGE 134)

AUGUST 31, 1977 DRAFT



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It must be stressed that libraries can easily accommodate their own interests (e.g. preservation or replacement) to the photocopying by libraries as allowed by the new law:

Subsection 108(b) provides that it is not an infringement of copyright for a library or archives or its employees to reproduce a single copy of an unpublished work in its collection, when it is done solely for purposes of preservation and security or for deposit for research use in another library or archives.

Subsection 108(c) allows reproduction for purposes of replacement of a published work that is damaged, deteriorating, lost or stolen after a reasonable effort has determined that an unused replacement cannot be obtained at a fair price.

Subsection 108(e) allows the reproduction of an entire work or a substantial part of it, if it is determined, after a reasonable investigation, that a copy cannot be obtained at a fair price.

The CONTU Guidelines offer equitable opportunities to libraries to obtain photocopies of periodical articles, etc. in lieu of interlibrary loans to satisfy the requests of library users. Section 107 (Fair Use) permits photocopying of copyrighted works for additional purposes when appropriate. Libraries will, by and large, be able to accommodate their library services to library users with all the protection of these exemptions to Section 106 (Exclusive Rights in Copyrighted Works).

Because of concerns for the public interest, libraries probably would wish to have some additional rights as they act as agents for users of the libraries; but libraries are prepared to be guided by the mandated review after five years. Then, all parties will be in a better position to determine whether there is an equitable balance between services provided for library users and the rights of copyright proprietors. Until then, libraries seek no changes

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in the law or Guidelines pertaining to photocopying. The King Research Report provides a base line for comparison of photocopying activities before the effective date of the new law and with such activities five years after the effective date.

It must be recognized that libraries prepare or request photocopies for their users, who are scholars, scientists, engineers, economists, performing artists, teachers, students, etc. Libraries are acting as agents of such users and not in the library's own interest. In essence, such photocopying reflects a pro bono publico interest. It would be a disservice to the public interest if there were a substantial denial of ready access to information thru library photocopying services.

Librarians --- by and large --- have no objections to reasonable payments for new services not now provided by publishers. Their objections are to the proposed or suggested payments for the privilege of the photocopying that may be permitted under the Copyright Law. Examples of such new services that could be offered by publishers include:

- a) A consortium of publishers, arranging to provide libraries with copies of periodical articles which are out-of-print or difficult to locate would certainly be entitled to a reasonable service charge;
- b) Publishers who would maintain stocks of extra copies of articles (offprints) would be similarly entitled to a reasonable service charge ("availability" must include expeditious delivery as well as suitable publicity to identify materials so available);
- c) Publishing services could be expanded to include a telephone sales department (perhaps by toll-free telephone lines), staffed by competent personnel who are trained to respond to immediate consultation on availability, prices, delivery, etc. and to expedite the actual shipment.

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The library community would welcome such expanded publishing services and would, in general, be willing to pay for such services. In contrast to the passive aspects of the proposed AAP Copyright Clearance Center (CCC), such expanded publishing services would inaugurate an era of real and active co-participation of publishers and librarians to satisfy the information-hunger of the nation's people.

5. Libraries, Copyright and the New Technology

While it is understandable that the subject of library photocopying has received so much attention, there are other aspects of the new technology which concern the library community both for the present and for the future. As information centers libraries are, for example, concerned about the potential copyright status of data bases and computer software*. A specific example is the copyright status of an abstract or precis that is transferred from an original publication into a data base. Another example that follows immediately is the copyright status of the computer output of a copy of an entire article in a copyrighted periodical. We recognize that the Commission has recently received reports on such matters and we have considered these with interest. We trust that further discussions and evaluations of such matters will occur before the Commission's report is written.

As agencies serving education, research and the economy, libraries also support the extension of Fair Use to areas such as off-the-air taping. We regard the Airlie House

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*We wish to note that the CNLA Committee does not feel that it is within its area of competence to discuss the question of the copyright status of computer programs. We are concerned that this matter be suitably resolved so that library services will not be adversely affected.

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Conference on Video Recording for Educational Uses (July 1977) as a good beginning in this direction, and we hope that further efforts will be made. We would expect as such deliberations take place that librarians will be involved and that librarians will be participants in the eventual decisions.

In August 1965 during hearings of the Senate Committee on the Judiciary (89th Congress) the Register of Copyrights appraised the twin problems of the information explosion and the new technology in these words:

"Just as the first copyright laws were a response to an earlier revolution brought on by the development of the printing press, so must a copyright statute today respond to the challenge of a technology based on instant communication and reproduction of an author's works throughout the world."

Some of the needs posed by the twin problems mentioned above were cited ten or more years ago by a number of non-librarian commentators. While there have been some applications of new technology, there is still no clear resolution of the related copyright issues. Three examples of such comments are:

"The traditional library provided access by lending the original document, but that method is incompatible with the principle of guaranteed access, which should govern the information-transfer systems of the future. We must find ways of providing transient or permanent access that do not preclude the concurrent access to the same document by other users of the system.

"The loan of duplicate copies, in either full size or microform, is a possible technique. Other important possibilities are visual displays on optical or electronic screens."
[Overhage, Science p.1032+ (May 20, 1966)]

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"We believe that some learning can be accomplished by computer-assisted instruction, thereby freeing the student and the faculty member for a more vital kind of interaction. We believe closed circuit inter-campus television conferences can be taped, stored, and transmitted at will over the education broadcasting system."

[Boyer, "New Ties that Bind SUNY." Educom p.1 (Apr 1966)]

"You must imagine, at the eventual heart of things to come, linked or integrated systems of networks of computers, capable of storing faithful simulacra of the entire treasure of the accumulated knowledge and artistic production of past ages, and of taking into the store new intelligence of all sorts as produced. The systems will have a prodigious capacity for manipulating the store in useful ways, for selecting portions of it upon call and transmitting them at any distance, where they will be converted as desired to forms, directly or indirectly cognizable --- whether as printed pages, phono records, tapes, transient displays of sights or sounds, or hieroglyphs for further machine uses. Lasers, microwave channels, satellites improving on Comsat's Early Bird, and no doubt, many devices now unnamable, will operate as ganglions to extend the reach of the systems to the ultimate users as well as to provide a copious array of additional services."

[Kaplan, "An Unhurried View of Copyright: Proposals and Prospects." Columbia Law Review p.851-52 (May 1965)]

We expect that some of the current discussions concerning a revision of the Communications Act of 1934 will speak to these issues. We also call attention to the fact that the Office of Technology Assessment is addressing such problems. Librarians hope to be involved in these deliberations and developments.

As citizens, we are concerned that the public interest and ready access to informational materials be assured; and that a monolithic system will not develop and result in the denial of additional freedoms of access to Americans.

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6. Conclusion

It is clear from all that has been said that there are a number of unanswered questions, areas of possible ambiguity, and complex problems yet to be finally resolved. At the same time it is our belief that after the extensive negotiations and sometimes difficult compromises that were reached, the law that has emerged represents a reasonable compromise plan which needs to be tested during the next five years.

As noted in earlier Sections of this document, libraries are preparing their staffs and their users for the necessary changes in policies and procedures that need to be implemented on and after January 1, 1978, in order to ensure compliance with the provisions of the law as now set forth.

Libraries exist to serve their users, and libraries are the agents of the users. We are concerned that the public interest be served and protected thru ready access to all information. Fair use assures access to information by the estimated 190,000,000 Americans who are library users. Their rights should prevail. There should be no bias to any segment of our society.

Creative works of authorship and publications in the arts and humanities must receive the same consideration as works in the "hard sciences" and engineering (for example, Scientific-Technical-Medical).

There is no evidence in the data of the King Research Report to suggest that there is any need for any actions before the five-year review mandated in Subsection 108(i). We do not feel that it is appropriate that additional guidelines or definitions are needed at this time. We are not sympathetic to reopening discussions at this time of the 1976 Copyright Law and its accompanying reports, guidelines and definitions as they affect photocopying in or by libraries.

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We hope that the Commission will agree that all parties need the experience of working with the provisions of the new law. All parties should strongly resist further temptations at this time to make changes in guidelines, to develop new definitions of terms, or to attempt to reopen other areas where honest differences of opinion may still persist without a sufficient foundation of factual evidence.

With the experiences to be gained during the next five years with this new legislation, all parties concerned will be better able to fully assess the impact of the new law on their individual goals and on their common goals to provide all users of copyrighted works with ready and reasonable access to information.

The library community looks to the Commission to provide leadership that will insure the responsiveness of the Copyright Law to the new technology as it exists today and as it can be anticipated for the future.

We very much appreciate this opportunity to express these views to members of the Commission.

Julius J. Marke
American Association of Law Libraries

Edward G. Holley
American Library Association

John G. Lorenz
Association of Research Libraries

Nina C. Matheson
Medical Library Association

Susan Sommer
Music Library Association

F. E. McKenna
Special Libraries Association
Chairman, CNLA Committee on
Copyright Law Practice and Implementation

Members and Alternates of CNLA Committee

Members

Professor Julius J. Marke (AALL) law librarian and professor of law, New York University. He is chairman of the AALL Copyright Committee, and is a past president of AALL. He is the author of numerous articles in law journals as well as author or co-author of monographs from which he has earned considerable royalties. Prof. Marke has been a member of the Publishing Board of the New York University Press. Before entering the profession of law and law librarianship, he was fine arts librarian at New York Public Library.

Dr. Edward G. Holley (ALA) is dean of the School of Library Science, University of North Carolina, Chapel Hill. He is chairman of the ALA Copyright Committee, and is a past president of ALA. He is a frequent author of articles for which he has received compensation. Dean Holley is a member of the Governing Board of the University of North Carolina Press. He has served as Education, Philosophy and Psychology Librarian at the University of Illinois, Urbana; and as director of the University of Houston Libraries.

Mr. John G. Lorenz (ARL) is executive director of ARL. He was formerly Deputy Librarian of Congress. Mr. Lorenz is the author of papers and the editor of periodical issues. His earlier work experience includes: head, Business & Technology Division, Schenectady Public Library; head, Reference Division,

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Grand Rapids Public Library; assistant state librarian, Michigan State Library; and director, Library Services Branch, USOE.

Mrs. Nina W. Matheson (Medical LA) is director, Health Sciences Library, The George Washington University. She is chairman of the MLA Copyright Committee, and is a member of the MLA Board of Directors. Mrs. Matheson's earlier work experience includes: selection officer, National Library of Medicine; bibliographer, Asian Studies, Indiana University; and librarian, Missouri Institute of Psychiatry.

Mrs. Susan Sommer (Music LA) is librarian of the Music Collection, Performing Arts Research Center, New York Public Library. She heads the Music Library Association's Copyright Committee. Mrs. Sommer is the author of articles and frequent reviews in High Fidelity. She is a member of the faculty of the Columbia University School of Library Service where she teaches the bibliography of the performing arts and music librarianship.

Dr. Frank E. McKenna (SLA) is executive director, SLA. He is chairman of the CNLA Committee on Copyright Law Practice and Implementation, a member of the SLA Copyright Committee, and is a past president of SLA. He is the former editor of the journal, Special Libraries. Dr. McKenna's academic studies were in chemistry, physics and mathematics. He was a research chemist in industrial research laboratories until his interests

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in data analysis and information retrieval led to his appointment to organize and to head the Airco Research Laboratories Information Center (Murray Hill, N.J.). His publications and patents are in chemistry and in library- and information-related activities for which he has received compensation.

Alternates

To insure continuity of representation by six library associations, six alternates for the member of the CNLA Committee were designated and were active in considerations of the CNLA Committee.

American Association of Law Libraries: Miss Ellen Mahar, member of the AALL Copyright Committee

American Library Association: Miss Eileen Cooke, director, Washington office, ALA; and Dr. Mary Jo Lynch, executive secretary, Reference and Adult Services Division, ALA, Chicago.

Association of Research Libraries: Miss Suzanne O. Franke, assistant executive director, ARL

Medical Library Association: John LoSasso, executive director, Medical Library Association

Music Library Association: Carolyn Hunter, member of the Music Library Association Copyright Committee

Special Libraries Association: Richard E. Griffin, assistant executive director, SLA

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Revised Interlibrary Loan Form

The new copyright law, PL 94-553, takes effect on January 1, 1978. Since the form had to be revised to provide space for copyright representation, other changes have been incorporated. The attached sheet shows the new form that was approved by the RASD Board at the 1977 annual ALA Conference. The reasons for each change are explained below.

1. "Request for loan or photocopy." The title of the form has been changed. Many librarians have pointed out this form is frequently used for photo-duplication requests and the new title better reflects the use of the form. The boxes have been included to make it easier for the receiving library to sort incoming requests.
2. "Request of" has been added so that a supplying library can suggest an alternative source for the requested item.
3. "No renewals" has been added for the benefit of supplying libraries who do not wish to renew the loan or material to requesting libraries.
4. "Note: the receiving library assumes responsibility for notification of non-receipt." This was displaced by the copyright statement.
5. The lower left corner contains the language which will enable a supplying library to be assured that the requesting library is making its request in compliance with the law. A complete explanation of this language and how to use it is contained in the attached document.
6. "If non-circulating" The language is changed for clarification.
7. "ISBN, or ISSN, or LC card, or OCLC, or other number, if known" has been added because of the increasing use of numerical identification for specific bibliographic items. Unless mandated by local convention, it is not essential to include this information, but provision of this identification may speed delivery.
8. The revised language, "verified in: OR: item cited in" attempts to clarify what information is sought. "Verified in" means that the accuracy of the bibliographic information in a citation has been checked in a source such as NUC. The source should be listed. If the citation cannot be verified in a bibliographic source, the requesting library should record the publication in which the patron found the citation.
9. The lines for author and title have been changed to clarify the language. Parentheses have been removed because they tend to suggest that the information requested in parentheses is secondary information. The word "year" was changed to "date" in the periodical title line to encourage recording the actual date if known. In the book line the word "year" was substituted for the word "date." The word "series" was included because of its bibliographic importance.
10. "Not needed after" has been added for guidance to the supplying library in the case of protracted delivery.
11. "Requester's order no." This is essential in the billing procedures of many photoduplication centers.

Copyright Representation on the
National Interlibrary Loan or Photocopy Request Form*

The form used to request a loan or photocopy of an item from another library has been modified to facilitate conformity with the Copyright Revision Act of 1976 (PL 94-553) and the guidelines which are intended to provide assistance in the application of the law. The sections of the law which relate to copies that may be requested by using the interlibrary loan or photocopy request form are sections 107 and 108. Two sets of guidelines related to section 107 may have application to interlibrary loan transactions. These are the "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions" and the "Guidelines for Educational Uses of Music." The guidelines which relate directly to interlibrary loan are the "Guidelines for the Proviso of Subsection 108(g)(2)" which were developed by the National Commission on New Technological Uses of Copyrighted Works (CONTU).

The requesting entity (borrowing library) is responsible for making sure that the request conforms to the copyright law and the accompanying guidelines. To assure the supplying entity (lending library) that the request does so conform, the requesting library must check one of the two boxes provided in the lower left corner of the paper form or include one of the corresponding codes, CCG (Conforms to Copyright Guidelines) or CCL (Conforms to Copyright Law), in the electronic transmission of the request. Unless one of these boxes is checked or one of the codes is included, the supplying entity may refuse to fill the request.

A check in the first box or transmission of the code "CCG" means that the request is in conformity with the CONTU "Guidelines." Requesting libraries should bear in mind that the "Guidelines" apply only to materials described in Subsection 108(d) of the law, i.e. an article or other contribution to a copyrighted collection or periodical issue or a small part of any other copyrighted work. A check in the second box or transmission of the code "CCL" means that the request is legitimate because it is authorized elsewhere in the copyright law.

☐ 108(g)(2) Guidelines (CCG)

The first box should be checked by the requesting entity, or the code "CCG" included in transmission of the request, under the following circumstances:

1. When the requesting entity has observed the quantitative restrictions set forth in guideline #1, or
2. When the requesting entity has in force or has entered an order for a subscription to a periodical (See "Guidelines" #2a) or has entered an order for a copy of any other copyrighted work (See "Guidelines" #2b), or
3. When the requesting entity owns the material to be copied and would have been able, under the provisions of Section 108 of the law to supply the requested copy from materials in its own collection had such materials been reasonably available (see "Guidelines" #2b).

*This is the form which transmits a request from one library to another, not the form which the user fills out to request materials. The latter form must include a warning of copyright in accordance with requirements that the Register of Copyright shall prescribe by regulation. (See PL 94-553, Subsections 108(d)(2) and 108(e)(2).)

☐ Other Provisions of Copyright Law, (CCL)

This box should be checked by the requesting entity, or the code CCL included in transmission of the request, whenever a copy of material in the public domain is requested or the request for a copy is sanctioned under parts of the law other than Subsection 108(d) as qualified by 108(g)(2) and its interpretive guidelines. This box should be checked under the following circumstances:

A. When the requested copy becomes the property of the user:

1. If the request is for an entire work or substantial part of a work where the requesting library has determined that a copy cannot be obtained at a fair price (See Subsection 108(e));
2. If the request is for a copy of book or periodical material made for a teacher in conformity with the "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions" or for copying of music under the "Guidelines for Educational Uses of Music";
3. When the requesting library believes, because of the circumstances of the request, that the reproduction and distribution of the copy is a "fair use" (See Section 107 for four statutory tests to determine whether a given reproduction is or is not a "fair use.");
4. When the requested photocopy is a copy of the kind of material described in 108(d) but published earlier than five years prior to the date of the request and, therefore, not covered by the "Guidelines";
5. When the requested material is not subject to the reproduction rights granted by Section 108, (i.e. is a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news) but the requesting library believes that, because of the circumstances of the request, the reproduction and distribution of the copy would be a "fair use" (See Subsection 108(d) for limitation of Section 108. See Section 107 for four statutory tests to determine whether a given reproduction is or is not a "fair use.")

B. When the requested copy becomes a part of the collection of the requesting library:

1. If the request is for a facsimile copy of a published work requested solely for replacement of a damaged, deteriorating, lost, or stolen copy of a work and the requesting library has determined, after reasonable investigation, that an unused replacement is unavailable at a fair price (See Section 108(c));

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2. Where, because of the circumstances of the request, the requesting library believes that the reproduction and distribution of the copy would be a "fair use" (See Section 107 for four statutory tests to determine whether a given reproduction is or is not a "fair use.")

SOURCES:

The Copyright Revision Act of 1976 (PL 94-553), Sections 107 & 108, was reprinted in American Libraries 8 (May, 1977): 250.*

The "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions" originally appeared in the House Judiciary Committee report (H. Rept. 94-1476) and has been reprinted with corrections in American Libraries 7 (November, 1976): 611.*

The "Guidelines for Educational Uses of Music" originally appeared in the House Judiciary Committee report (H. Rept. 94-1476) and was reprinted with corrections in the ALA Washington Newsletter, November 15, 1976.

The "Guidelines for the Proviso of Subsection 108(g)(2)" originally appeared in the House Judiciary Committee report (H. Rept. 94-1476) and was reprinted in American Libraries 7 (November, 1976): 610.*

*All of the above documents appeared in the November 15, 1976 issue of the ALA Washington Newsletter which is now available as The Librarian's Guide to the New Copyright Law. Copies may be ordered (\$2 each) from: Order Department, American Library Association, 50 East Huron, Chicago, IL 60611. Please enclose check or money order payable to the American Library Association.

Recommended Notices Required by Subsections 108(a)(3) and 108(f)(1)

1. Recommendation for the Notice of copyright to be included on the reproduction of a work as required by Subsection 108(a)(3).

NOTICE: This material may be protected by
copyright law (Title 17 U.S. Code)

A library may choose to stamp this Notice on the first page of each item photocopied, to attach it to the glass on the photocopying equipment so that it is automatically transferred to each sheet, or to use some other method such as a separate sheet whereby this message is affixed to all reproductions.

2. Recommendation for the Notice to be displayed on unsupervised reproducing equipment in a library or archives as required by Subsection 108(f)(1).

NOTICE: The U.S. Copyright Law (Title 17,
U.S. Code) governs the making of
photocopies of copyrighted material.
The person using this equipment is
liable for any infringement.

RECOMMENDED RECORD MAINTENANCE AND RETENTION PROCEDURES
FOR INTERLIBRARY LOAN DEPARTMENTS

This statement deals only with recommended RECORD MAINTENANCE AND RETENTION GUIDELINES. Interlibrary loan librarians have a responsibility to familiarize themselves thoroughly with the provisions of the Copyright Revision Act of 1976 (P. L. 94-553), particularly Sections 107 and 108, and the provisions of the Guidelines drafted by the National Commission on New Technological Uses of Copyrighted Works (CONTU). Guideline #4 states:

"The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made."

Most libraries already keep some kind of record of all interlibrary loan requests. That record should continue. However, it must be supplemented by the kind of record described below for certain kinds of requests. (See Subsection 108 (d) of the law and CONTU Guideline #1)

1. Form of record.

It is recommended that records for periodicals be kept by title. Two possibilities seem workable: 1) a copy of the ALA Request for Loan or Photocopy form, a copy of the teletype request, etc. could be kept; or 2) a card could be set up for each title requested containing essential information including whatever is necessary to link this card to the library's file of request forms.

N.B. A library may choose one of these methods or develop its own. Whatever is done it is essential that the library keep a file of requests for these materials, that the file be accessible by title and that the date of the request be noted.

2. Creation of Record.

a. For periodical material: Beginning on January 1, 1978, when a request is made for a copy of an article or articles published in a copyrighted periodical within five years prior to the date of the request, the library will either: a) set up a card for the title of that periodical or b) enter a copy of the request form in a file of forms arranged by title. If a card is set up it should include the date of the request and either the name of the requester or the requester's order number so that reference may be made to the complete form if necessary. All later requests for the same periodical title will be recorded in like manner.

Records Retention Guidelines
Page Two

b. For material in any other copyrighted work: Beginning on January 1, 1978, when a request is made for a contribution to a collection or for a small part of any copyrighted work, the library will follow procedures based on those described above. The record may be kept by title or main entry.

3. Use of Record.

a. Making requests: Before requesting a photocopy, the record will be checked. If a library is using the card system and no card exists, one will be created. If a card does exist, and the number of previous requests filled complies with the CONTU Guidelines, the date and name of requester will be entered. If a library is using the copy system and the number of previous requests complies with the CONTU Guidelines, the request will be made and a copy filed.

b. Receiving material: When a request is filled, this will be noted on the card or copy. If a request is not filled, a line will be drawn through the entry on the card or the copy will be marked "not filled."

4. Contingencies.

When a request is made for loan of material rather than a copy, but the supplying library sends a photocopy, a record will be made either by marking on a card or by filing a copy of the form, at the time when the material is received.

5. Retention of Records.

a. Items in this file of cards or copies of forms must be kept until the end of the third complete calendar year after the end of the calendar year in which a request shall have been made. Thus, for a request made on any date in 1978, the record must be retained until 31 December 1981.

b. If a library uses the card method, copies of the form on which an interlibrary loan has been requested must also be kept, in whatever order the library wishes, until the end of the third complete calendar year after the end of the calendar year in which a request is made.

c. Information contained in the records should be summarized before records are destroyed. The summary may be useful for the five-year review mandated by Subsection 108 (i) of the copyright law as well as for internal management purposes. Suggestions for the form of the five-year review summary will be made at a later time.

Statement
of
Eugene Garfield
President & Chairman of the Board
of the
Institute for Scientific Information
to the
National Commission on New Technological Uses of
Copyrighted Works
on

PHOTOCOPYING

October 21, 1977

Mr. Chairman and Commissioners: My name is Eugene Garfield; I am President and Chairman of the Board of the Institute for Scientific Information, which is located in Philadelphia. The Institute is a multi-national corporation that provides a wide variety of information services to scientists and librarians throughout the world. It has been in existence approximately 20 years; it employs nearly 400 people; and it is operated on a for-profit basis.

From a functional point of view, the information services we provide can be classified into the following five major groups:

- o Current awareness
- o Selective dissemination of information (SDI)
- o Restrospective search
- o Journal acquisitions planning
- o Document fulfillment

It is because of ISI's role in document fulfillment through our Original Article Tear Sheet service, which is frequently referred to as OATS, that I have been asked to make a statement today. As requested

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by Mr. Frase, I will try to describe the operation of the OATS service, as well as our pricing structure, our customer base, and our plans for the future.

For about 18 years, ISI has been operating and advertising its OATS service. It was developed as a logical extension of our other services, which are primarily designed to alert people to the existence of journal articles of interest. OATS was designed to supply full-text copies of those articles when such copies are not readily available through more traditional channels, such as libraries or reprints from authors. Originally, the use of OATS was limited to those who subscribed to ISI services. For many years now, however, anyone has been able to use the OATS service. Regular ISI subscribers do have an advantage in that they are provided with the accession numbers which identify specific journal issues. If this number is not provided with an order for an article, there is a surcharge of one dollar added to the following standard prices

- U.S., Canada, and Mexico; first class or
airmail delivery; up to 10 pages \$3.50
- all other locations; airmail delivery;
up to 10 pages \$4.50
- each additional 10 pages or fraction
thereof \$2.00
- charge per article for TELEX or
telephone order \$1.00

-3-

At present, ISI receives about 5,000 journals representing all the disciplines of the sciences and the social sciences. We currently process and index more than 500,000 articles a year -- about 100 articles per journal. By various methods such as gift, exchange, or subscription, we obtain about three copies of the average journal. One of these is designated the master copy. The other two are used initially for various editorial purposes, but eventually they go into our warehouse where they are stored by accession number. From the two extra copies of each journal issue, we actually tear out the articles requested through OATS. The master copy gives us the back-up from which we photocopy articles when multiple requests for a single article use up the available tear sheets.

Approximately 70% of all OATS orders are filled with tear sheets. During 1977 we expect to fill slightly more than 100,000 OATS requests. This compares to nearly 99,000 requests filled during 1976 and nearly 90,000 during 1975. Over 90% of all orders come from residents of the United States. Less than 10% of all OATS orders come from individuals. Almost 70% of our orders come from approximately 50 organizations. Of these, over 90% are major corporations. The kind of responsive service that we provide and the high degree of satisfaction our customers derive are well described in the article reproduced in Attachment A; the article was written by the director of IBM's Technical Information Retrieval Center.

Throughout the history of OATS, timeliness and convenience have been emphasized in its operation. All orders received by telephone or TELEX are filled the same day. Over 98% of all requests are filled within 48 hours after they are received. Although most requests are for very current articles, we maintain a back-file so that we can deliver articles that are up to four years old. Convenient, pre-addressed order cards that give users a record of requests made are available free of charge. We also enable the user, through the use of deposit accounts, to avoid the high administrative costs associated with the preparation of purchase orders and payment of invoices. Additionally, pre-payment for OATS orders can be achieved through the purchase of ISI stamps that can be sent in with individual orders. An order card and ISI stamps are shown in Attachment B.

From its start the OATS service has paid a royalty to journal publishers with whom we have negotiated agreements. Currently, the payment is 60 cents per article or 20% of the OATS fees collected -- whichever is larger. On a 20-page article, it is \$1.00. A key point to note, however, is that the royalty is not just paid on orders filled by photocopies: it is also paid on those filled by tear sheets. Technically, when we supply tear sheets for an article, they are not subject to copyright provisions. Unless specifically prohibited by the publisher, anyone has the right to sell a portion of a journal or book.

Royalties are paid to publishers annually and are based on computerized records that can be examined upon request. Provided with each check is a summary of the number of articles filled from each of the publisher's journals. The ISI working records are more detailed than the publisher's report and show how many requests were received for any specific article. A typical royalty agreement for publishers who participate in OATS is shown in Attachment C.

ISI has persisted in operating its OATS service in the face of some publishers' strong concern that it is depriving them of subscription revenue. Basically, we do it because we want subscribers to ISI services to know that when traditional channels fail them they can promptly obtain the article they want from us. I believe that even if a subscriber comes to ISI for an article just once a year, he or she must be serviced without a delay of weeks.

We have also persisted with OATS because we feel it proves that we can and will protect authors' or publishers' rights.

The 60 cents-per-article minimum royalty I mentioned earlier is about double what we used to pay, since we originally paid 10% on a lower price. And we are prepared to go higher if publishers insist on it. It is their privilege. ISI supports the basic principle of copyright protection even if it causes ill-will with some librarians who are our customers. We believe, however, that if publishers insist on exorbitant royalty fees -- one publisher expects to receive \$7.50 per article -- they will limit the effectiveness

of voluntary arrangements such as the one set up by the Association of American Publishers. What they will get instead will be a compulsory licensing system similar to the one that exists for music. Under such an arrangement, publishers will be likely to receive less compensation per page.

In the future we expect our OATS service to expand as libraries appreciate the true costs of providing inter-library loans and accept the idea of a payment to publishers -- whether through the copyright clearance center or through ISI or elsewhere. Some firms may choose to use in-house copying facilities rather than ISI. This may be more expensive, but it may be required by the urgent needs of research personnel. We support the idea of the copyright clearance center and any cost-effective means for facilitating research.

How IBM's TIRC Fills Requests For Copyrighted Journal Articles

by **Waldo E. Brooks, Jr.**

IBM's Technical Information Retrieval Center (ITIRC) at Armonk, N.Y., provides IBM personnel with sophisticated, computer-based selective dissemination of information and retrospective search services. The success of these services has created a growing demand for full-text copies of the documents covered in the data base. While many types of documents can be delivered with ease, supplying copies of journal articles had become particularly troublesome due to the frequent unavailability of the original journals and a concern for copyright infringement. Through an innovative arrangement with the Institute for Scientific Information (ISI) of Philadelphia, Pennsylvania, ITIRC can now supply its users with full-text original or authorized copies of articles from any of over 5000 journals. These articles are obtained through ISI's Original Article Tear Sheet (OATS) service which operates under royalty arrangements that compensate journal publishers for articles supplied from their journals through the tear sheet service.

What ITIRC Does

ITIRC has provided computer-based search services for IBM personnel since 1964. Functioning as the hub of an information network, ITIRC interacts with more than 80 IBM technical libraries and information centers. These libraries and centers serve the primary information needs of the company's personnel at the local level. The satellite operation at La Gaudie, France, is an important link in the ITIRC system and serves all IBM users and libraries in Europe.

The data base compiled and searched by ITIRC has five major components: IBM documents, public domain report material from National Technical Information Service (NTIS), selected abstracts from Engineering Index tapes, SPIN (American Institute of Physics) tapes, and Chemical Abstracts tapes. Files of internal documents are very extensive. For example, there are 20 years of technical reports and a

comprehensive collection of IBM inventions, patents, and corporate standards. Abstracts from external documents number over 600,000.

From this data base, ITIRC operates a selective dissemination of information service and a retrospective search service. The SDI service is called Current Information Selection (CIS) and is used by approximately 3700 IBM scientists, engineers, and other professionals who wish to keep up with the latest developments in their fields. The retrospective search service is used by those who want state-of-the-art information for a new assignment or want to make sure their current project is aware of parallel and related development work. Over 30 retrospective search questions are processed each day by ITIRC.

Search specialists are available at ITIRC to help formulate search questions and develop interest profiles. As often as possible, this is done in collaboration with the librarian at the IBM library or the information center nearest the user. For both retrospective and SDI searches, the computer examines the title and bibliographic description of the original document, assigned index terms, and the full text of each abstract. The results of both types of searches take the form of abstracts printed out on computer paper.

Meeting the Need for Full-Text Copies

For IBM documents and public domain literature from NTIS, the user could always request full-text copies from his local IBM library or directly from ITIRC. Over 130,000 documents are now in the ITIRC collection in microfiche form, with another 30,000 older items on 16mm film. Users are encouraged to order microfiche copies since it costs about three times as much to enlarge printed copies from the microfilm. Complications arose, however, when the user wanted to obtain full-text copies of articles contained in the Engineering Index, SPIN, or Chemical Abstracts portions of the data base. The first complication was the availability of the journals covered by these three tape services. There was, of

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course, no centralized collection so the user had to go to his local library facilities to try and find the material. Some of the larger IBM locations subscribed to a considerable number of the journals, but none of them came close to covering the thousand of titles processed by the three tape services. Also, many ITIRC users were at scattered small locations without library facilities.

Of course, interlibrary loans and reprint requests were frequently used to satisfy user requests when the actual journal was not available at an individual IBM library. The delay factor became important here, however, as well as the clerical costs involved in these procedures. Additionally, the percentage of requests that were actually satisfied through either of these methods tended to be disturbingly low.

The second complication was that nearly all of the items contained in Engineering Index, SPIN, and Chemical Abstracts tapes are copyrighted articles. ITIRC management realized that any attempt to devise a centralized solution to the problem had to be in full compliance with existing copyright laws and had to consider laws likely to be passed in the future.

Original Article Tear Sheet Service

ITIRC management was aware that, for over 10 years, the Institute for Scientific Information (ISI) has been supplying its subscribers with full-text copies of articles located through its services. Called the Original Article Tear Sheet (OATS) service, subscribers' requests are usually met by removing the actual pages of articles from duplicate journal copies received by the Institute (Some small percentage of OATS requests, however, are filled with photocopies.)

Since ISI's OATS service covered over 5000 key journals from all over the world, there was a strong likelihood that many of the journals covered by the Engineering Index, SPIN, and Chemical Abstracts tapes would be included. As a preliminary step, a list of journals covered by ISI was obtained and compared to the journals covered by the three tape services. It was determined that the size and nature of the overlapping coverage was such that most article requests generated by ITIRC services could be met through OATS.

The next step was to investigate the copyright situation. How could ISI continue to supply tear sheets or copies of

copyrighted articles on a commercial basis without getting into legal difficulties? First, since removing tear sheets prevents further duplication of any given article at ISI, there is no legal problem. It is a one-time use of an article as far as ISI is concerned. Second, ISI has agreements with the publishers of copyrighted journals covered by its services. These permit ISI to make photographs of articles after it exhausts its supply of duplicate copies of a particular issue of a journal and thus cannot supply tear sheets. In return for these agreements, ISI has set up a system to record the number of such tear sheets or photocopies sold and to compensate the publishers according to a set formula. The net result of this is that ISI can assure its customers that articles supplied through OATS are not in violation of the copyright laws.

As negotiations between ITIRC and ISI became more serious, another potential problem had to be considered. Input to the ITIRC system utilizes highly abbreviated journal citations which include CODENS. Users nearly always used these abbreviated citations to order full-text copies of articles. If ISI was unable to work with these kinds of citations, someone in the ITIRC organization would have to expand them. The amount of clerical work in such a situation would be unacceptable. Fortunately, ISI was willing to fill user requests exactly as they were received. This contrasted with other sources of full-text copies which usually want a complete and very exact bibliographic citation.

Test Program

With all foreseeable objections satisfied, ITIRC began a test program in mid-1973 which utilized ISI's OATS service to fill users' requests for journal articles. Under the program, users' requests still went initially to the nearest IBM library. However, if the request couldn't be filled there, it was sent on to ITIRC. In turn, ITIRC batched the requests and sent them to ISI on a daily basis.

Twenty-four hours after it received the requests, ISI would have the full-text copies in the mail back to ITIRC. Additionally, ISI provided a monthly invoice for the articles supplied that identified the charges according to IBM employees number copied from the original request form. Therefore, payment to ISI is centralized and the division and location distribution of cost is determined by a

centralized computer file of employee numbers.

During the test period, ITIRC requested approximately 125 articles per week from ISI. About 75 percent of the requests were filled from ISI's journal coverage. Very few errors were made by ISI; in almost every case, the article received was the one requested. The total time that elapsed from the time the IBM library at a branch location received a request and when the user had the article was usually 5-7 working days, depending on the location of the user.

One additional benefit of the OATS service was the increased user satisfaction when they received actual tear sheets instead of the photocopies they expected. They felt that the information content of photographs and color-coded graphs was frequently lost when photocopies of articles were made. The tear sheets, on the other hand, provided such illustrative material exactly as originally printed.

Expanded Service

With a history of satisfactory performance during the test period, it was decided to give the OATS service more publicity throughout IBM and make it available to all branch offices. This was initiated early in 1974. As users became more aware of the availability of OATS, article requests are expected to increase to 300-500 per week. As the volume increases, it is expected that monitoring these article requests that are not filled will allow ISI to identify titles that are good candidates for adding to the OATS service.

At ITIRC it was always felt that alerting users to the existence of material relevant to their interests is only one component of a good information service. The other component is to actually put in users' hands the documents they need to read in their entirety. Through the use of the OATS service, ITIRC is now able to offer this second service component on a much more satisfactory basis than before.

Waldo E. Brooks, Jr. is manager of IBM's Technical Information Retrieval Center.

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3.7

ATTACHMENT A

Nov. 1-3, 1974 Vol. 28

B-8



ORDER CARD

(Original Article Tear Sheet) Service

| | | | |
|----------------------------------------------------------------------------------------|--|--|--|
| Place ISI® stamps in this area. (The most convenient way to pay for OATS articles.) | | | |
|----------------------------------------------------------------------------------------|--|--|--|

For each article up to 10 pages

U.S.A.—\$3 (includes 50¢ service charge and Air Mail)

Can. & Mex.—\$3 (includes 50¢ service charge, Mex. Air Mail 50¢ extra)

All other areas—\$3.50 (includes 50¢ service charge and Air Mail)

For each additional 10 pages or fraction thereof \$1. For "Hot Line" telex or telephone orders, add 50¢. For orders with ISI accession numbers, add \$1.00 and label for multiple ordering. OATS provides articles from over 500 journals covered by ISI services since Jan. 1970.

☐ Check enclosed \$_____ (Please prepayment with orders under \$15)

☐ Send Air Mail (but not for Mexico only)

Please send me _____ new OATS order cards

(quantity)

Name _____ (Please print)

Organization _____ Tel. _____

Address _____ City _____

State _____ Country _____

Post _____ Zip _____

Please send the following article:



Fill in oval with
ISI Accession Number

Journal _____

Volume _____ Issue No. _____

Beginning Page _____ Date _____

Author (last name and initials) _____

This reference is listed in:

☐ Current Contents® ☐ ASCA®

☐ Other _____

Please also send ISI stamps:

\$_____ (\$15 minimum) so I can obtain tear sheets of articles through OATS more quickly and easily.

☐ Check enclosed ☐ Bill me

For ISI use only P C A

X F C C N M

Fill BACK and
front with
date, volume and
number of journal,
Article Tear Sheet
Service Request

| |
|-----------|
| Amount |
| Check No. |
| Date |

24 hours
after we get this
card any article
covered
by ISI
information
services
can be on its
way to you

oats® Hot Line Telephone:
215/923-0460. Telex 84-5305



ISI®
Institute for Scientific Information
325 Chestnut Street,
Philadelphia, Pa. 19106, U.S.A.



ISI
Institute for Scientific Information
375 Chestnut Street
Philadelphia, Pa. 19106, U.S.A.
Tel. (215) 923-3300
Telex 844305
Radio SCINFO

AGREEMENT

This Agreement effective this 19 day of by and between the Institute for Scientific Information, Inc., a Pennsylvania corporation at 325 Chestnut Street, Philadelphia, Penna., 19106, hereinafter referred to as "ISI," and

hereinafter referred to as "LICENSOR"

WHEREAS, ISI is engaged in part in the dissemination of technical information, and

WHEREAS, LICENSOR publishes and controls the journals set forth in Appendix A annexed hereto, and made a part hereof,

WHEREAS, ISI is desirous of furnishing to its clients copies of articles from the journals set forth on annexed Appendix A; and

WHEREAS, LICENSOR agrees to permit ISI to furnish such copies of articles.

NOW, THEREFORE, for and in consideration of the sum of One Dollar and other good and valuable consideration, the full receipt of which is hereby acknowledged, with the parties intending to be legally bound hereby, it is agreed as follows

1. LICENSOR shall furnish to ISI three (3) complimentary subscriptions of each journal listed in Appendix A

2. LICENSOR grants on behalf of itself, its successors and assigns, and, to the extent that it exercises any control thereover, on behalf of the authors who publish articles within its journals set forth in Appendix A to ISI a non-exclusive right and license on a worldwide basis to furnish tear sheets and/or photocopies of articles from the journals set forth in Appendix A at prices and terms established by ISI, and

3. For the right and license above provided, ISI shall pay to LICENSOR royalties pursuant to the following

(a) ISI shall pay the LICENSOR a royalty of percent (%) of ISI's sales price of any tear sheets and/or photocopies sold by ISI to clients; and

(b) In respect to all photocopies of articles produced by ISI from the journals set forth in Appendix A, a royalty of percent (%) of ISI's sales price for such photocopies. By "ISI's sales price" as used above is meant ISI's gross sales price net of its charges for postage, special handling, and telephone service.

4. ISI agrees to establish records directed to the royalties herein provided. LICENSOR shall have the right to inspect such records during regular business hours, provided reasonable notice is given. ISI shall be under no obligation to maintain records of account for a period longer than three (3) years, and no accounting may be had in respect to transactions which are more than three (3) years old

5. The royalties herein provided shall be paid by ISI on March 31st of each calendar year for the year ending the preceding December 31st (or fractional portion of said annual portion in the case of an initial or terminal portion). However, if the royalties due are less than \$75.00, they shall be credited toward royalties due in the next calendar year

6. The term of this Agreement shall be for one (1) year, from the date first above written. The Agreement shall be renewed automatically for additional three (3) year terms unless terminated by either party within ninety (90) days prior to an anniversary date of this Agreement.

7. As a condition precedent to this Agreement, LICENSOR warrants and represents to ISI that it has the right to enter into this Agreement, and that neither the authors of any of the articles in the journals set forth in Appendix A nor any other third party has the right to interfere with the enjoyment of the rights herein conveyed to ISI.

8. LICENSOR agrees that in the event it should hereafter grant a license to another person, firm or corporation on terms and conditions more favorable than those herein accorded, LICENSOR shall promptly offer ISI the benefit of such more favorable terms and conditions. Any such offer to ISI shall not be effective unless ISI shall accept the same in writing within 60 days of receipt of the offer.

9. The rights of both parties shall be assignable to their successors and assigns, who shall assume all of the obligations of this Agreement.

10. Any dispute arising under this Agreement shall be settled by arbitration in Philadelphia, Pennsylvania pursuant to the rules then existing of the American Arbitration Association. Such arbitration shall be final and binding on the parties.

11. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized officers.

INSTITUTE FOR SCIENTIFIC INFORMATION, INC.

Attest

Samuel Layman
LICENSOR

Attest

[Signature]

ATTACHMENT C

COPYRIGHT CLEARANCE CENTER, INC.
One Park Avenue
New York, New York 10016

PRESENTATION TO
THE NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES
OF COPYRIGHTED WORKS

October 21, 1977

MICHAEL HARRIS, Chairman of the Board
DAVID WAITE, President
BEN H. WEIL, Vice-President and Secretary

HONORABLE COMMISSIONERS:

It is our privilege to report today on the completion of the establishment of the Copyright Clearance Center, Inc., a service organization whose initial plans were described to you on January 13, 1977, and March 31, 1977. The Center is a not-for-profit organization with an administrative office in New York City and an operations office in Schenectady, New York. Beginning on January 1, 1978, the Center will provide organizational users of document copies with a convenient centralized mechanism for payment for the preparation of needed photocopies which otherwise would fall outside the provisions of and guidelines for the new copyright law. Such a mechanism will be needed by many libraries, library consortia, information businesses, access services which prepare alerting and retrieval guides (including tables of contents) and back these up with photocopies on request, and various other photocopying organizations. For many of these it will be a cost-effective alternative to seeking direct licenses for copying from hundreds or thousands of serials, although that route will continue to remain open.

As you know, the Center was planned by a Task Force of the Technical, Scientific, and Medical Division of the Association of American Publishers, with the cooperation of the Information Industry Association, the Authors League of America, and representatives of scientific societies and independent publishers. Advice and approval was received from the STI Communications Task Group of the Industrial Research Institute, and plans were tested and improved through presentation to many groups and through two advisory committees. Mr. Ben H. Weil, on loan from Exxon Research and Engineering Company, was responsible for systems design and for setting the Center into operation.

The Center was not created in a vacuum. In its planning we had available the deliberations of the Conference on the Resolution of Copyright Issues and the preliminary report of the King Research study; further, two members of our planning group were members of the advisory group for that study. Several members of our planning group had also served on the Cosmos Club and Dumbarton

Presentation to the National Commission
on New Technological Uses of Copyrighted
Works (continued)

Page 2

Oaks groups, as well as the Conference on the Resolution of Copyright Issues, and the Association of American Publishers and the Information Industry Association had in early 1976 held a Conference on the Essential Elements of a Copyright Clearinghouse.

From among the several alternatives for a clearance mechanism we chose the direct-transactions route--payment for the specific photocopying done--for several vital reasons. First of all, it is the most exact method, channeling payments in direct proportion to use. Because charges are specific, it is easier to pass them on to the direct users. Also, we realized that one of the simpler alternatives, adding one or more increments to subscription prices to license photocopying, would inevitably have several harmful effects: further erosion in subscriptions because of inflexible library budgets (and greater difficulty in passing along the higher costs to copy users), and consequent reductions in local collections and direct service to local users. Other pros and cons are available in the documents of the Conference on the Resolution of Copyright Issues, the King Research study, and the proceedings of the AAP-IIA Conference on Essential Elements of a Copyright Clearinghouse.

We have noted some comments in presentations and elsewhere to the effect that our system will be uneconomic and therefore socially undesirable--that it will take years for the Center to break even, and that it will therefore be a financial burden to libraries without benefitting copyright owners. We are glad, therefore, to be able to report that, based on our administrative budgets and our three-year contract with our systems operator, the Center has been able to set a 1978 handling charge (to be deducted from stated copying fees, not added to them) of \$0.25 per article copied.

This charge does not include much amortization of approximately \$200,000 for design, set-up, and initial operating costs, but these would have added at most a few cents per copy if they had to be amortized over five years. (Instead, most or all of the \$200,000 will have been funded by contributions from concerned organizations.) And even the present handling charge can be reduced when transactions exceed the very low basis which we have used for calculations (1,000,000 copies reported per year). In addition, the system has been designed to minimize incremental internal costs for users; some preliminary studies indicate that these should approximate \$0.10 per transaction for manual methods of reporting. We doubt that these handling costs could be considered a social disaster.

Another misapprehension about our system is that it will slow access to information--to the copies needed by users. This is not the case. Users of the Center may proceed to make their copies when needed, and then to report and pay for them. Still another rumor is that users of the Center will have to keep elaborate and costly records. Actually, once copying is reported, the

Presentation to the National Commission
on New Technological Uses of Copyrighted
Works (continued)

Page 3

Center itself does not require a user to keep any records; indeed, its system can inexpensively provide a user with detailed information on what it has been copying (by serial title, or even by article).

Moreover, Center-using organizations will not be required to report their Section 107 or 108 fee-free photocopying. This was initially envisioned as desirable in order to provide research-valuable records of total photocopying, but it was quickly evident that the Center could not afford to process entries that would yield no revenues, and that some libraries did not desire to do this.

The Center recognizes, of course, that it provides a direct answer to only one copying need of users--the need to be able quickly to make fee-required copies of documents available locally. Users also have a need for copies of documents that are not at hand, but here also the Center will be of service. It will provide a mechanism for payment by suppliers of copies for which fees are required, suppliers which are not directly licensed by the individual publishers. (Conversely, we have pointed out to publishers that licensing copy suppliers as the only means to serve copy-reading users--without making local copying possible--would fail to satisfy users' very real needs for speed, and would inevitably have a deleterious effect on local subscriptions.)

The procedures of the Center have been detailed in two handbooks. One of these provides the publishers of serials and separates with basic information on how to make copying of their articles accessible through the Center. The other provides libraries and other user organizations with information on how to register with, report to, and pay through the Center for their fee-required photocopying. These handbooks are attached, so only a brief summary seems indicated.

In this system, each individual publisher sets its own article copying fees (if any), and in 1978 will usually begin to state these fees on the first pages of articles as part of an article-fee code. The Center will publish lists of participating publishers, including stated fees (if any) for the copying of pre-1978 articles.

Use of the services of the Center involves user-organization registration with the Center's Operations Office, to obtain a CCC User-Registration Number for use in reporting copying, and to receive Center lists and publications. User reporting of fee-required copying is normally done monthly in a variety of ways, including sending in marked reporting copies of the first pages of articles copied; completed data logs; or, through copy-supplying libraries, marked copies of the ILL form. Payment methods include deposit discounts, billing, and possibly prepayment through use of stamping meters or stamps.

Some information about the organization of the Copyright Clearance Center itself seems indicated. Its charter and bylaws were drafted by representatives of the Association of American Publishers, the Authors League of America, the

Presentation to the National Commission
on New Technological Uses of Copyrighted
Works (continued)

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Information Industry Association, and independent publishers, who also recommended much of its initial Board of Directors. The bylaws call for a sizeable Advisory Committee which may attend all Board meetings and which may later recommend representative selection of the next Board.

The Center's Board of Directors, which includes leaders from the publishing, scientific, and academic communities, was formally elected at the first Board meeting on September 1:

CHAIRMAN, Michael Harris, Vice President, John Wiley and Sons, Inc.; VICE CHAIRMAN, H. William Koch, Director, American Institute of Physics; VICE PRESIDENT and SECRETARY, Ben H. Weil, Senior Staff Advisor, Exxon Research and Engineering Company; TREASURER, James Barsky, Senior Vice President, Academic Press, Inc.; Garth Hite, Publisher, The Atlantic Monthly; William McElroy, Chancellor, University of California at San Diego; Barbara W. Tuchman, author of The Guns of August, Proud Tower, Sitwell and the American Experience in China. Norman Garnezy, Professor of Psychology at the University of Minnesota, was named to Board membership at its meeting on September 21.

Nominations for the Center's Advisory Committee were approved on September 21, and the following members have already indicated their willingness to accept.

Toni Bearman, National Federation of Abstracting and Indexing Services; Kathleen Bingham, FIND/SVP; Christopher Burns, Arthur D. Little, John E. Creps, Jr., Engineering Index; Donald C. Curran, Library of Congress; Melvin Day, National Library of Medicine; Eugene Garfield, Institute for Scientific Information; Eugene L. Hess, Federation of American Societies for Experimental Biology; Townsend W. Hoopes, Association of American Publishers; Irwin Karp, Authors League; Bella Linden, Linden and Duetsch; William A. Nasri, University of Pittsburgh; Charles Overberger, University of Michigan; John Rothman, New York Times; Lewis L. Snyder; Paul Zurkowski, Information Industry Association.

The Center has selected Finserv Computer Corporation of Schenectady, New York, to serve as its operational contractor. Finserv, which was chosen from among seven bidders, will operate with cooperation from Bibliographic Retrieval Services, Inc., also of Schenectady. Thus, the Center's Operations Office will be in Schenectady.

The Board of Directors has also chosen Mr. David Waite as the Center's President, its chief operating officer, effective October 1. Mr. Waite, among other responsible positions, was formerly President and General Manager of Information Dynamics Corporation. Mr. Waite has thus taken over from Mr. Ben H. Weil, who returns to Exxon Research and Engineering Company but will remain active as a Center board member and officer.

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This September, the U.S. Justice Department issued a Business Review Letter assuring that the Department will not raise antitrust objections to the establishment or operation of the CCC. We appreciate the letter which the Commission sent on the appropriateness of our effort.

Work is proceeding on schedule on the details still ahead. Pilot runs are scheduled on all of the operational programs of the contractor before the end of 1977. Lists of participating serials will be published before the end of the year, so that user organizations will know the coverage of the Center; supplements will be issued frequently. Naturally, concentrated efforts are underway to assure maximum publisher participation in the Center's program. Representatives of the Center are participating in numerous workshops and meetings designed to explain the services and operations of the Center.

One last point, which we are certain that you recognize. The Copyright Clearance Center is open for service to all authors and publishers, and to use by all types of copy-using organizations. It is designed to serve both groups, and as such cannot be an interpreter of the copyright law or its guidelines. We note, however, that users are raising many questions, and believe that more-exact guidelines and definitions would be of real service.

We have appreciated this opportunity to bring the Commission up to date on the Copyright Clearance Center, in much more detail than the brief statement that we filed at its last meeting. We firmly believe that the creation of the Center is a responsive answer to the challenge posed by the Senate in its 1975 Report and echoed again in Senator McClelland's 1976 letter to the Commission: the recommendation to authors, publishers, and others concerned that "workable clearance and licensing procedures be developed...concerning library photocopying practices not authorized by the new law."

CCCI-77/1

A HANDBOOK FOR SERIAL PUBLISHERS:
PROCEDURES FOR USING THE PROGRAMS OF THE
COPYRIGHT CLEARANCE CENTER, INC.

Prepared for the
COPYRIGHT CLEARANCE CENTER, INC.
by the

AAP/TSM
COPYRIGHT CLEARANCE CENTER TASK FORCE
One Park Avenue
New York, New York 10016

AUGUST 1977

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A HANDBOOK FOR SERIAL PUBLISHERS:
PROCEDURES FOR USING THE PROGRAMS OF THE COPYRIGHT CLEARANCE CENTER, INC.

1.0 INTRODUCTION

On January 1, 1978, the new United States Copyright Law (P.L.94-553) which was enacted in 1976 goes into effect. Its provisions affect publishers and others in many important ways, one of which concerns the production and use of photocopies of "articles" and similar short documents. The new law makes it clear that the permission of the copyright owner is required by anyone needing to do systematic and other kinds of photocopying not permitted under Sections 107 or 108. However, Congress has also made it clear that it does not want to turn back the clock technologically: that it wants to assure adequate access to copyrighted works. For example, the Senate has "recommended" to authors and publishers "that workable clearance and licensing procedures be developed . . . concerning library photocopying practices not authorized by the new law."

Accordingly, the Copyright Clearance Center, Inc., has been established as a not-for-profit organization to provide publishers (and, where appropriate, authors) with a relatively simple centralized mechanism through which they can receive self-designated fees for authorized photocopying. While use of the Center does not in any way prevent publishers from continuing their normal permissions programs, it may obviate their need for hundreds or thousands of individual licenses to libraries, information-on-demand businesses, and others needing the right to prepare photocopies beyond the limited extent or quantity otherwise permitted by the new law. Obviously, the Center's programs will also be of real benefit and convenience to copy-user organizations.

The initial planning that led to incorporation of the Center was largely done by publishers and others in the technical, scientific, and medical areas--areas in which the photocopying of "articles" is already widespread and important. However, this planning always called for the services of the Center to be open to use by publishers of all types of collections of short works (journals, magazines, newsletters, proceedings, symposia, etc.), and this is now the case operationally. Indeed, the Board of Directors and Advisory Committee of the new Center will be broadly representative of authors, publishers, and document users.

This handbook has been prepared to set forth suggested procedures for publishers of serials and other collections of short works who wish to use the initial systems and services of the Copyright Clearance Center. Additional information on the rationale and background for the Center is available in a separate document ("Program to Expedite the Provision of Copies of Technical-Scientific-Medical and Other Journal Articles and Short Works, and to Expedite Related Information-Service Copying"). An instructional booklet is also being prepared for organizations needing to use the services of the Center to prepare or to obtain the photocopies required by their users.

2.0 OUTLINE OF PROCEDURES

Details of the suggested procedures are presented in subsequent sections and appendixes of this document. In essence, the publisher of compendia of short documents may participate in the programs of the Copyright Clearance Center, Inc., by:

2.1 Including its individually set copy fee in a standardized article/copy-fee code on the first page of each post-1977 "article" for which a copying fee is desired. (See Section 3.0).

2.2 Supplying the Center with the title and ISSN (or ISBN) for each pre-1978 compendium for which per-copy article fees are required, plus information on the fee(s), for use in the Center's systems and for publication in a list to be supplied to users by the Center. (See Section 4.0).

2.3 Explaining in the masthead (copyright) statement that this fee-based copying is to be reported and paid to the Copyright Clearance Center, Inc. (See Section 6.0)

2.4 Accepting quarterly payment of fees received for this copying of articles from its compendia, minus the Center's processing charges, summarized separately for each compendium. More-detailed breakdowns of the publisher's own accounts by volume, by "article," or by "article" only where an author royalty is involved can also be supplied at additional cost. (See Sections 3.3 and 7.0).

3.0 CODING AND PRICING OF POST-1977 "ARTICLES"

3.1 Code Statement. Each participating serial desiring to collect per-copy fees for 1978 and later articles through the Center must place a standardized code in a standardized way on the first page of all such articles--a code which uniquely identifies both the article (and hence the serial and its publisher) and the individually designated per-copy fee. This code should preferably be accompanied by a copyright notice, both to assure that this statement will be presented correctly and as a service to users who otherwise may have to add it to the copies themselves under the new law.

The details for constructing this article code are presented in Appendix I; they are essentially those developed and tested by Subcommittee 34 of Committee Z39 of the American National Standards Institute. For example, in a 1978 May 21 (78-05-21) issue of a journal which has XXXX-XXXX as its ISSN (International Standard Serials Number), the code statement for an article beginning on page 243 (0243) to which the journal has assigned a bibliographically based Item Number of 0521-0243 and a per-copy fee of \$X.XX (\$0X.XX), but for which no author royalty is involved, would be:

-3-

XXXX-XXXX/78/0521-0243\$0X.XX/0
 © 1978 Name of Copyright Owner

"Articles" in some collective works may have to bear a code based on an ISBN (International Standard Book Number), although if an ISSN can be obtained it should preferably be employed. Rules for such ISBN-based codes are analogous to those based on ISSN; for example, in a compendium copyrighted in 1978 which has X-XX-XXXXXX-X as its ISBN, the code statement for an "article" beginning on page 32 to which the publisher has assigned a bibliographically based Item Number of 32 and a per-copy fee of \$X.XX (\$0X.XX), and for which an author royalty is involved, would be:

X-XX-XXXXXX-X/78/0000-0032\$0X.XX/1
 © 1978 Name of Copyright Owner

See Appendix I for information on code construction for "separates."

3.2 Code Size and Location. Because the Center will often be receiving photocopies of the first pages of articles as a method for user reporting of copying, and not printed originals, it is important to print the code large enough and far enough from trim margins to insure its readability and presence on these photocopies. Therefore, we would appreciate the use of a 10-point type for the code line (and copyright line, if separate) and placement of the code in the bottom margin of the first page, no less than 3/8-inch from the trimmed bottom, and 3/8-inch from the outside trimmed edge if the code statement is not centered on the page. Please do not place the code in or near the inside margin. Examples of code statements appear in Appendix II.

3.3 Copying Fees. Each individual publisher will set his own individual article-copying fees (if any). The publisher of each serial will retain the right to establish whether or not a given article or other serial document (news story, "Note," editorial, etc.) will or will not carry a copying fee, and what any fee will be. The Copyright Clearance Center, Inc., will play no part in the fee-setting process.

3.4 Data Needed by the Center for Post-1977 "Articles". To elect to use the services of and to receive payments from the Copyright Clearance Center, Inc., for the copying of post-1977 articles, a publisher theoretically needs only to print the proper codes on its articles and to include an appropriately informative statement in its masthead (copyright) statement (see Section 6.0). However, the Center urges each publisher to complete and send in a copy of the form in Appendix VII for each of its serials. This will aid in the preparation of informational lists for users, and will provide the Center with the proper addresses for payments.

4.0 DATA NEEDED BY THE CENTER FOR PRE-1978 ARTICLES

Libraries and other copying organizations will be reporting to the Copyright Clearance Center, Inc., the following bibliographical data for each pre-1978 article for which its publisher requires payment of a fee through the

Center: (1) the serial's title, (2) the issue date, (3) the first page number of the article, (4) the total number of pages in the article, and (5) the number of copies made of the article. Requiring more complete information would place an undue burden on users, and would also unduly increase the costs of data entry and processing by the Center. As may be noted in Section 5.0, the costs for processing pre-1978 article data will in all likelihood be greater than for post-1977 articles, because the latter will be publisher-coded, whereas the Center itself will have to translate bibliographical data into code equivalents for the pre-1978 articles. As may also be noted in Section 5.0, however, it is likely that this extra processing will become increasingly less significant, because the percentage of uncoded (pre-1978) articles copied will decrease each year.

Publishers should be aware that the Center's coding system for pre-1978 articles places certain mechanical limitations on systems for establishing fees for articles for a given serial. While each serial publisher will remain free to establish his own specific fees for his pre-1978 articles, only the following structures seem practical: (1) establishment of a specified fee per article for all articles for each given pre-1978 year, range of years, or all previous years, regardless of the length of the articles; or (2) establishment of a specified fee per page per article for all articles for a given pre-1978 year, range of years, or all previous years. Any other fee system is presently beyond the capacity of the Center's systems.

Within these limitations, serial publishers electing to use the services of and to receive payments from the Copyright Clearance Center, Inc., for the copying of pre-1978 in-copyright articles must appropriately state their fee schedules for these articles on copies of the forms in Appendixes VI or VII. Receipt of these forms by the Center is the only way in which the Center can prepare to receive and transmit payments for pre-1978 articles. In addition, it is the only practical way in which this information can get to users. The Center has promised to cumulate this information (serial titles and copy-fee requirements) in informational lists for distribution to users before the end of 1977.

5.0 CENTER TRANSACTION CHARGES

Publishers should be aware that the operating and administrative expenses of the Center will require it to deduct per-copy processing charges from copy payments received. The amounts will depend on the number of copy transactions processed by the Center and on whether the articles copied were coded (post-1977), and also on the contractor selected by the Center. Bids received indicate that at 1,000,000 copies in 1979 (75% post-1977) the Center's processing charges would fall in the range of \$0.17-\$0.25 per copy for post-1977 (coded) articles and \$0.18-\$0.50 per copy for pre-1978 (uncoded) articles, to cover both the contractor's operating charges and the Center's own administrative expenses. If 2,000,000 copy transactions are processed, the charges could drop about a third; if only 500,000 are processed, they could be about that much greater. Processing charges in 1978 will not include Center administrative expenses if present fund-raising efforts succeed, but the contractor's charges would encompass a larger percentage (over 50%) of pre-1978 articles; these factors come close to balancing out.

While inflation could eventually require upward adjustments (outweigh system improvements), it is noteworthy that recent studies indicate that well over 50% of use of technical, scientific, business, and trade periodicals (and presumably of their copying) occurs in the first 1-2 years after issue.

6.0 MASTHEAD (COPYRIGHT) STATEMENT

6.1 For several reasons, including the information of readers, it will be necessary for each serial stating fees for copying in the codes on the first pages of articles in its post-1977 issues to include a definitive statement in its masthead, presumably as part of its issue-copyright statement. The conditions and exact wording of this statement is the prerogative of each publisher; the following is simply one example of the type of information that might be included by a publisher wishing to so limit the consent he will be giving:

The appearance of the code at the bottom of the first page of an article in this journal (serial) indicates the copyright owner's consent that copies of the article may be made for personal or internal use, or for the personal or internal use of specific clients. This consent is given on the condition, however, that the copier pay the stated per-copy fee through the Copyright Clearance Center, Inc. for copying beyond that permitted by Sections 107 or 108 of the U.S. Copyright Law. This consent does not extend to other kinds of copying, such as copying for general distribution, for advertising or promotional purposes, for creating new collective works, or for resale.

6.2 An additional masthead statement may be needed in regard to the copying of articles published prior to 1978 if the publisher is requiring payment of fees for such copying, or if he wishes to describe other permissions requirements. If the publisher is waiving copying fees for pre-1978 articles, he may wish to state this in the masthead.

7.0 PAYMENTS TO PUBLISHERS

Section 2.4 has already presented the basic information on payments of collected fees to participating publishers, with Center processing changes approximately as stated in Section 5.0. Further details will be sent to each registered publisher (see Sections 3.4 and 5.0) well before the processing of the first quarter's receipts in 1978.

As reported in the program document named in the Introduction (Section 1.0): "The participation of foreign publishers publishing journals abroad is being given special consideration. Reciprocal arrangements may need to be negotiated with corresponding foreign payments centers."

8.0 CONFIDENTIALITY

The data processing and reporting systems of the Center are so designed as to provide confidentiality to publishers, authors, and users who employ the Center's services, in order to prevent unauthorized disclosures of specific transactions information.

9.0 OTHER INFORMATION

The Copyright Clearance Center, Inc., is a new venture, designed to be of broad service. Its procedures and systems were established to take advantage of modern computer processing, within a time schedule requiring readiness by January 1, 1978, the effective date of the new copyright law. It is quite likely that these procedures and systems can be improved, so comments and suggestions from participating publishers will always be welcome.

The Center stands ready to answer questions at any time. During August 1977 these should be addressed to Mr. Ben H. Weil, c/o the Association of the American Publishers, Inc., One Park Avenue, New York, New York 10016 (212/689-8920).

APPENDIX IHOW TO CONSTRUCT ARTICLE-FEE CODES

Fortunately for the Copyright Clearance Center, Inc., Subcommittee 34 of the American National Standards Institute's Standards Committee Z39 had been appointed in 1976 to develop a code or codes for serial articles, for a variety of purposes which include use for a system involving necessary payments for photocopy(ing) privileges. This Subcommittee developed and discussed several code designs, then two of its members tested on a computerized base of over 270,000 bibliographic references the effect of the presence or absence of specific bibliographic elements on the ability of any code to identify articles uniquely.

This study showed that virtually all of the available bibliographic elements for each article would have to be used to establish unique identification with acceptable accuracy for a multiplicity of uses. This meant that a code structure to include all the necessary bibliographic elements would be both complex and long, because of the wide variety of identification practices still employed by serials. The Subcommittee may eventually develop a standard for such a complete code--essentially, a "bibliographic strip" for an article--but on-going work on an international standard may make this presently untimely, and, again, such a code will be a long one.

Accordingly, Subcommittee 34 of ANSI Committee Z39 developed and will shortly process through ANSI's standardization procedures an article-identification code structure for use specifically for copyright-free payments such as those to be used by the Copyright Clearance Center, Inc. This is the code structure which serials wishing to participate in the Center's program should use to create the article-fee code statements required for the first page of each article for which they require a fee.

This ISSN-based code structure--all-numerical--is as follows. Please note that it is a fixed-field code; initial zeroes should be employed if needed to left-fill the fields for the Item Number and the Per-Copy Fee. The number of meaningful digits required for each field is shown below them (dividers not counted).

XXXX-XXXX/YY/NNNN-NNNN\$XX.XX/X

| | | | | |
|--------|---------|------|------|-----------|
| Serial | Last | Item | Per- | Author- |
| ISSN | Digits | No. | Copy | Royalty |
| | of Year | | Fee | Indicator |
| 8 | 2 | 8 | 4 | 1 |

ISSN; ISBN. As repeatedly mentioned in this handbook, each participating compendium of short articles will need an ISSN (or an ISBN, much less frequently). Appendixes III-V contain information on how to obtain an ISSN if a serial does not already have one. ISBN's may be obtained from the ISBN Agency (Attention: Mr. Emery Koltay), 1180 Avenue of the Americas, New York, NY 10036).

Last Digits of Year. The article-fee code calls for the use of the last two digits of the year of publication in the second field; e.g., 1978. When a serial employs a fiscal year rather than a calendar year to date its volumes, e.g., 1978-1979, it should employ the last two digits of the latter year in the article-fee code; e.g., 79.

Item Number. The "Item Number" is a new, arbitrary convention of the system, designed to guarantee unique codes. It is an eight-digit number (separated into two fields of four digits for ease of reading) which each serial may either assign as it sees fit, as long as its method results in a unique number for each "item" in that serial, or which the serial may base on certain bibliographic elements if its dating system permits. Even arbitrary "Item Numbers" can have some bibliographic value if sequential (but not necessarily consecutive) numbers are employed in a given year, but this is not a requirement of the system. For example, some serials might find it useful to employ numbers assigned to manuscripts.

However, a serial that does desire to build some bibliographical significance into its Item Numbers, against the possibility of having them cited to it frequently, might want to develop the eight-digit field somewhat as follows:

MMDD-PPPP

where MM usually stands for the (always-two-digit) month of issue (01 to 12), DD usually stands for the (always-two-digit) day of issue (01 to 31), and PPPP stands for the (always-four-digit) number of the first page of the article (0001 to 9999). Serials dating issues with seasons instead of months could use the following numbers in the MM subfield (usually with 00 in the DD subfield):

| | |
|-----------|-----------|
| 13 Spring | 15 Fall |
| 14 Summer | 16 Winter |

If a serial that is not a daily or weekly publication issues a Supplement or Part II that does not bear unique pagination, it might want to consider placing a "32" in the DD subfield.

Serials numbering their issues but not employing dates other than years may wish to employ these issue numbers and the numbers of the first pages of articles in bibliographically based Item Numbers, e.g., IIII-NNNN, where IIII is the issue number (0001 to 9999) and NNNN is the number of the first page of the article (0001 to 9999).

Other conventions can be developed. The Copyright Clearance Center will be glad to work with publishers on these, or to report later decisions of the ANSI Z39 Subcommittee.

Per-Copy Fee. U.S. and international publishers using the Center's systems must state their per-copy fees in U.S. dollars and cents. As mentioned elsewhere, each serial establishes its own copy fee(s).

Author-Royalty Indicator The author-royalty indicator should be used by the serial (as a "1") when it has a royalty agreement with the author(s) of a specific "article" and will later want revenue reports for articles so coded. Serials should technically employ a "0" in this field where no such agreement exists, but in practice they may optionally omit this field; i.e., the "0" when there are no author agreements, to save unnecessary typesetting.

General; Examples. The code should normally be set completely in numerical characters, without any spaces, and with use of the field dividers shown ("/" and "\$") for ease of reading. Serials may elect to employ a check digit for the entire code as an added, terminal digit (not shown), but this is not initially a requirement.

It may help to repeat here the examples from Section 3.1. In the first of these, for a 1978 May 21 (78-05-21) issue of a journal which has XXXX-XXXX as its ISSN (International Standard Serials Number), the code statement for an article beginning on page 243 (0243) to which the journal has assigned a bibliographically based Item Number of 0521-0243 and a per-copy fee of \$X.XX (\$OX.XX), but for which no author royalty is involved, would be:

XXXX-XXXX/78/0521-0243\$OX.XX/0
© 1978 Name of Copyright Owner

The second example, for a collective work which employed an ISBN, was for a compendium copyrighted in 1978 which has X-XX-XXXXXX-X as its ISBN, in which the code statement for an "article" beginning on page 32 to which the publisher has assigned a bibliographically based Item Number of 32 and a per-copy fee of \$X.XX (\$OX.XX), and for which an author royalty is involved, would be:

X-XX-XXXXXX-X/78/0000-0032\$OX.XX/1
© 1978 Name of Copyright Owner

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To aid readers, serials consisting largely of multi-page articles for which arbitrary Item Numbers have been employed in the article-fee codes may want to consider including Item Numbers in their Tables of Contents (especially those for volumes) and in volume indexes (perhaps in the form of a sequential list with associated first-page numbers).

If a copyright statement is printed with the article-fee code, serial publishers should remember that the three elements for the statement required by the copyright law are: (1) the copyright symbol ©, or the word "Copyright," or the abbreviation "Copr."; (2) the year of first publication; and (3) the name of the copyright owner. If the publisher so desires, he may set the copyright notice on the same line as the article-fee code, preferably after it.

SEPARATES

Publishers who issue one or more series of separates without first publishing these short documents in journals or other compendia can obtain a separate ISSN for each such series if the separates in it bear a series title and are numbered. While, again, the publisher is free to use an arbitrary Item Number in its article-fee code, a bibliographically based article-fee code could be as follows for a separate in a series having XXXX-XXXX as its ISSN, issued in 1978 on April 17 (04-17), having 317 (0317) as its "separate" number, having been assigned a copying fee of \$X.XX (\$0X.XX), and with no author-royalty arrangement involved:

XXXX-XXXX/78/0417-0317\$0X.XX/0
© 1978 Name of Copyright Owner

As mentioned above, however, the publisher is not required to use a bibliographically based Item Number. Thus, the above eight-digit Item Number "0417-0317" could also have been 0000-0317, or any unique Item Number that the publisher chooses.

Publishers whose separates bear no series title and/or are otherwise irregular may wish to consider basing the article-fee codes for their separates on STRN's (Standard Technical Report Numbers), although these must contain at least one uppercase alphabetical character, and the STRN need not be of fixed length within a maximum of 22 digits. Details for the construction of an STRN are presented in ANSI Z39.29-1974, 1974 December 11, an American National Standard available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018 (\$3.00). The Report Codes (issuer codes) called for in these STRN's can be obtained from the National Technical Information Service (Attention: Mrs. Jaffray Aronson (703/557-4744)), Springfield, Virginia, 22161. An article-fee code could be as follows for a separate having as its (STRN) "separate" number PUBR-78/0312 (where the Report Code assigned to the publisher is PUBR and the separate is that publisher's 312th (0312) in 1978), having been assigned a copying fee of \$X.XX (\$0X.XX), and having no author-royalty arrangement:

-11-

PUBR-78/0312/\$0X.XX/0

(The Center, in entering this article-fee code, would code the STRN as having 22 digits, e.g., 0000000000PUBL-78/0312), but the publisher is not required to print the extra left zeros.)

Publishers of separates issued after 1978 and bearing article-fee codes should include an appropriate statement explaining the purpose and use of the code, somewhat as in Section 6.0

APPENDIX II

EXAMPLES OF CODE STATEMENTS AND LOCATIONS

poly(2-vinylpyridine), poly(4-vinylpyridine), and poly(2-methyl-5-vinylpyridine) obtained by radical polymerization and assigned three peaks in the absorptions due to a ring carbon linked to main chain into triads.

In our previous paper,⁷ we reported on the synthesis of 2-vinylpyridine- β,β - d_2 and its polymer and analysis of the ^1H -NMR and ^{13}C -NMR spectra of deuterated and nondeuterated polymers. As a result, we found that from the ^1H -NMR spectra of nondeuterated polymer, fraction of isotactic triad can be obtained, while the ^1H -NMR spectra of deuterated polymers give triad tacticity. In this article, we wish to report on the synthesis of 4-vinylpyridine- β,β - d_2 and its polymer and analysis of the ^1H - and ^{13}C -NMR spectra of poly(4-vinylpyridine).

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with previously reported data obtained from bulk properties.²

However, very recent scattering experiments performed in our laboratory³ have shown that for the case of HeAr, it is possible for the interatomic potential to have a well substantially larger than the one reported by Chen *et al.* (32 vs 24.2 K). Moreover, even more recently, a new study of the HeAr system has appeared⁴ where viscosity data are used to produce the repulsive part of this potential with a rather high degree of accuracy. It seems from this paper that if the repulsive wall has to agree with the results of Chen *et al.*,¹ the attractive well must then be quite large (up to 38 K).

In what follows, we will present scattering measurements made on He-noble gas mixtures at the energies of 208 and 707 K. The analysis of these experiments,

relevance of the present results for the clarification of the combination rules problem will be discussed at the end of the paper.

II. EXPERIMENTAL

The apparatus has been described previously.¹³ However, several important modifications were introduced in order to extend the range of angles and relative energies at which data can be obtained.

The primary beam nozzle was fitted with outer windings of stainless steel capillary through which liquid N_2 may be forced, allowing its operation at both room temperature and around 80 K. In addition, great effort was spent in accurately determining the velocity and velocity distribution of the primary beam (He in all cases) with a symmetric slotted disc velocity selector, using both a

HOW TO ACQUIRE AND DISPLAY AN ISSN^{a, b}

The International Standard Serial Number (ISSN) is an internationally accepted code for the identification of serial publications. It consists of seven digits plus a check digit. Use of the ISSN provides serials publishers, subscription agencies, abstracting and indexing services, librarians, and purveyors of computer-based reference services with a tool for economically communicating basic bibliographic information with a minimum of error. Because it uniquely identifies a serial title, the ISSN aids in ordering, shipping, issue claiming, billing, and other control functions. A machine-readable data base of all ISSN assignments made throughout the world is maintained at the Paris headquarters of the International Serials Data System.

The instructions which follow explain how to acquire an ISSN and how to display the ISSN for purposes other than those pertaining to the new copyright law. Use of the ISSN as a component of the article code for photocopy payment has been explained elsewhere in this document.

Acquisition Of An ISSN In The United States^b

The application form on the reverse of this sheet (or photocopies of it) should be used to request an ISSN assignment for a serial published in the United States from the National Serials Data Program (NSDP). Please duplicate the form if you publish more than one title; i.e., use one form for each title. Also, please note especially that documentation representing the publication must be submitted with the application; assignment of the ISSN will be expedited if you include with your application a representation of the publication, e.g., an actual issue, or a photocopy of the cover, title page, and masthead. You will be notified of the ISSN assignment by mail within a week of application, and will be sent additional materials about the ISSN at that time. NSDP should be contacted if the title of a publication is later changed, since a new ISSN must then be assigned.

Display Of The ISSN

In addition to use of the ISSN in an article code or citation, this number should be displayed in a prominent position on every issue of the serial. The preferred position recommended by international agreement is the top right corner of the cover, but it is acceptable for the ISSN to appear elsewhere on the publication (usually in the masthead area). The ISSN should be printed in two groups of four digits, separated by a hyphen and preceded by the letters "ISSN", e.g.: ISSN 1234-5679. The type face and size is not determined by a standard and can be set at your discretion. If the serial issue has an International Standard Book Number as well as an ISSN (usually for monographs in series), the two numbers should appear together, each with its own prefix. ISSN should appear in advertisements and catalogs and in all other places where details of books and serials normally appear.

-
- a. Information from the National Serials Data Program, Library of Congress.
 - b. See Appendix V for a list of ISDS Centers to which non-U.S. serials should apply for ISSN (do not use the form in Appendix IV). If your country does not yet have a national center, please address your request to the International Center in Paris.

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| NSDP Library of Congress National Serials Data Program Washington, D.C. 20540 | SERIAL DATA SHEET FOR PUBLISHERS |
| <p>Your assistance is requested in order for the National Serials Data Program to assign your serial an ISSN (International Standard Serial Number) and an accompanying Key title. There is no charge for making this assignment. When you have completed the application form, send _____ back to NSDP at the above address.</p> <p>This form MUST be accompanied by a sample issue of the publication, or if this is inconvenient, a photocopy of the cover, title page, and masthead. If the serial has not yet been published, a mock-up of the items above will suffice, provided that a sample issue (or photocopies) is sent as soon as it is available.</p> <p>If you have any questions, feel free to contact NSDP for assistance. Your cooperation is greatly appreciated.</p> | |
| <input type="checkbox"/> This is a request for prepublication assignment of an ISSN. The first issue of the serial will appear (date): _____ with the following numbering: _____ | |
| <input type="checkbox"/> This is a request for assignment of an ISSN for a serial which began publication (date): _____ with the following numbering: _____ | |
| 1. TITLE (from the title page, or the cover if there is no title page) | |
| 2. VARIANT FORMS OF THE TITLE on the cover, masthead, or other parts of current issues. Please specify source of each title on the issue. | |
| 3. EARLIER TITLES which this serial continues | |
| 4. PUBLISHER | 5. CITY AND STATE OF PUBLISHER |
| 6. SUBSCRIPTION ADDRESS | |
| 7. SUBSCRIPTION PRICE (indicate differential rates) | |
| 8. FREQUENCY | 9. LANGUAGE(S) OF TEXT |
| 10. ADDITIONAL INFORMATION, COMMENTS, QUESTIONS | |
| <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>TO BE PROCESSED, THIS DATA SHEET MUST BE ACCOMPANIED BY AN ISSUE OF THE SERIAL OR PHOTOCOPIES AS SPECIFIED ABOVE. APPLICATION FOR A NEW ISSN MUST BE MADE IF THE TITLE OF THE PUBLICATION CHANGES.</p> <p>11. CONTACT PERSON</p> <p>(name) _____ (telephone) _____</p> <p>(address if different from subscription address) _____</p> <p>(date this form completed) _____</p> <p>If you publish other serials, check the box below—you will be sent additional data sheets for ISSN assignments. <input type="checkbox"/></p> </div> <div style="width: 50%; border: 1px solid black; padding: 5px;"> <p style="text-align: center; margin: 0;">For NSDP Use ONLY</p> <p>Comments and Instructions</p> <p>Date received by NSDP _____</p> <p>Date publisher notified of assignment _____</p> <p>Request postpub. issue <input type="checkbox"/></p> <p>ISSN: _____</p> <p>Key title: _____</p> </div> </div> | |

APPENDIX V

LOCATIONS OF ISDS CENTERS
FOR NON-U.S. ASSIGNMENT OF ISSN

If your country does not yet have an ISDS center, please
direct your request to the International Center in Paris

ISDS International Center
CIEPS
20, rue Bachaumont
75002 Paris
France

ISDS National Center
U.K. Serials Data Center
British Library
Store Street
London WC1
Great Britian

Australian National Center for ISDS
National Library of Australia
Canberra ACT 2600
Australia

ISDS Canada
National Library of Canada
National Library of Canada
395 Wellington St. Ottawa K1A 0N4
Canada

ISDS National Center
Bundesrepublik Deutschland
Deutsche Bibliothek
Zeppelinalle 4-8
6000 Frankfurt am Main
Bundesrepublik Deutschland

Centre national d'enregistrement des
publications en series
Bibliotheque nationale
58, rue de Richelieu
75084 Paris Cedex 02

Centro nacional del ISDS
Centro argentino de informacion
cientifica y tecnologica (CAICYT)
1091 Moreno 4313/3
Buenos Aires
Argentina

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APPENDIX VI

COPYRIGHT CLEARANCE CENTER, INC.

DISCONTINUED-SERIAL REGISTRATION FORM

Please send a separate copy of this form to the Copyright Clearance Center, Inc., for the present c/o the Association of American Publishers, Inc., One Park Avenue, New York, NY 10016, preferably before October 15, 1977, for each discontinued-serial title that has no present counterpart but for which per-copy fees are desired for pre-1978 articles that are in copyright. Please notify the Center promptly if any of the following are changed later.

Discontinued-Serial Title: _____

Corresponding ISSN*: _____

Fee Information To Be Included in the CCC's System and Lists: (Please state your fees only in terms of per-article or per-page for each specific year, range of years, or all previous years.) _____

Publisher Name and Address for Payments Recipient: (If you are listing more than one current or discontinued serial, please supply identical information whenever possible. This is especially important for a discontinued serial: you will normally want to supply the name and address of the present copyright owner.)

* Please obtain an ISSN if one is not already available.

APPENDIX VII

COPYRIGHT CLEARANCE CENTER, INC.

PRESENT-SERIAL REGISTRATION FORM

Please send a separate copy of this form for each present serial title (with earlier-title information on back) to the Copyright Clearance Center, Inc., for the present c/o Association of American Publishers, Inc., One Park Avenue, New York, NY 10016, preferably before October 15, 1977. Please notify the Center promptly whenever any of the following are changed later.

Present Serial Title: _____

Corresponding ISSN:* _____

Will you be coding your 1978 articles? Yes ____; No ____.

Fee Information for Pre-1978 Articles, To Be Included in the CCC's System and Lists:** (Please state your fees only in terms of per-article or per-page for each specific year, range of years, or all previous years.)

Publisher Name and Address for Payments Receipt: (If you publish more than one serial, please supply identical information wherever possible.)

Name of Individual to be Contacted for Clarifications _____

Date of Submission of This Form _____

-
- * If you do not have an ISSN for this serial, please obtain one in advance of filing this form, by using a copy of Appendix IV for U.S. journals, or by applying to the proper ISSN center listed in Appendix V.
 - ** Use back of form to supply information needed for articles in issues that appeared under an earlier but corresponding serial title or titles.

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Additional information is needed for this serial if it was earlier published under a different title or titles. If copying fees are to be paid to someone other than the present publisher, please supply appropriate information.

Earlier Title #1: _____

Corresponding ISSN*: _____

Any Difference in Pre-1978 Fees? _____

Earlier Title #2: _____

Corresponding ISSN*: _____

Any Difference in Pre-1978 Fees? _____

Earlier Title #3: _____

Corresponding ISSN*: _____

Any Difference In Pre-1978 Fees? _____

* The ISSN for the present title cannot be used. Please supply the correct one (obtain it if needed).

CCCI-77/2

HANDBOOK FOR LIBRARIES AND OTHER ORGANIZATIONAL USERS WHICH COPY
FROM SERIALS AND SEPARATES:

PROCEDURES FOR USING THE PROGRAMS OF THE
COPYRIGHT CLEARANCE CENTER, INC.

COPYRIGHT CLEARANCE CENTER, INC.

Administrative Office:
One Park Avenue
New York, New York 10016

Operations Office:
P. O. Box 765
Schenectady, New York 12301

OCTOBER 1977

ABSTRACT

The Copyright Clearance Center, Inc., is a not-for-profit service through which libraries and other organizations may conveniently pay, centrally, for much of their copyrighted-document copying that exceeds exemptions in the new copyright law, for Center distribution to the appropriate publishers. The Center does not itself provide copies of documents, but use of its system will expedite copy provision by many libraries, information businesses, access services, and others.

In this system, each individual publisher sets its own article copying fees (if any), and in 1978 will usually begin to state these fees on the first pages of articles as part of an article-fee code. The Center will publish lists of participating publishers, including stated fees (if any) for the copying of pre-1978 articles.

Use of the services of the Center involves user-organization registration with the Center's Operations Office, to obtain a CCC User-Registration Number for use in reporting copying, and to receive Center lists and publications. User reporting of fee-required copying is normally done monthly in a variety of ways, including sending in marked reporting copies of the first pages of article copied; completed data logs; or, through copy-supplying libraries, marked copies of the ILL form. Payment methods include deposit discounts, billing, and possibly prepayment through use of stamping meters or stamps.

This handbook for libraries and other organizations which copy from serials and separates provides the operational information and forms required by these user organizations.

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HANDBOOK FOR LIBRARIES AND OTHER ORGANIZATIONAL USERS WHICH COPY
FROM SERIALS AND SEPARATES: PROCEDURES FOR USING THE PROGRAMS OF
THE COPYRIGHT CLEARANCE CENTER, INC.

1.0 INTRODUCTION

On January 1, 1978, the new United States Copyright Law (P.L. 94-553) which was enacted in 1976 goes into effect. Its provisions affect libraries and other organizational users of document copies in many ways, especially as regards the use of "articles" and similar short documents. The new law makes it clear that the permission of the copyright owner is required by anyone needing to do systematic and other kinds and quantities of copying not permitted under Sections 107 or 108. However, Congress has also made it clear that it does not want to turn back the clock technologically: that it wants to assure adequate access to copyrighted works. Specifically, the Senate recommended to authors, publishers, and others concerned that "workable clearance and licensing procedures be developed . . . concerning library photocopying practices not authorized by the new law."

Accordingly, the Copyright Clearance Center, Inc., has been established as an independent, not-for-profit centralized mechanism whose use can obviate the need to obtain hundreds or thousands of individual licenses from publishers by libraries, library consortia, information-on-demand businesses, access services, and others needing the right to prepare photocopies beyond the limited extent otherwise permitted by the new law. Existence of the Center does not in any way prevent publishers from continuing their normal permissions programs, or users from asking for them, but the Center's programs should also be of real benefit and convenience to publishers.

The initial planners of the Center were largely publishers, authors, information-center managers, librarians, and others in the technical, scientific, and medical areas--areas in which the photocopying of "articles" is already widespread and important. However, this planning always called for the services of the Center to be open to use by publishers and users of all types of collections of short works (journals, magazines, newsletters, proceedings, symposia, etc.), including separates, and this is now the case operationally. Indeed it is anticipated that, perhaps with some modifications, the Center will be able to accommodate works of all types, regardless of length. The Board of Directors and Advisory Committee of the new Center are broadly representative of authors, publishers, and document users.

This handbook provides operational information to libraries and other organizational users of document copies which need to use the services of the Copyright Clearance Center. A handbook for the use of serial publishers (CCCI-77/1) has also been prepared to expedite the inclusion in the Center's programs of the serials, other collections of short works, and separates to which access is desired by users.

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The Copyright Clearance Center, Inc., does not itself provide copies of documents. That is presently the role of the publishers themselves, of directly licensed or Center-using information businesses and other access services, of resource libraries, and of libraries and information services within organizations. It should also be clearly understood that payments through the Center are not required when the copy supplier (including an internal library) has direct licenses from the publishers to make its copies. To repeat, what the Center can and does do is to provide libraries and other organizations needing permission to make copies legally with a simple, centralized mechanism through which to report and to pay for this copying after it has been done, hence with no delay for those needing the copies.

The costs of operating the Center's system (its Operations and Administrative Offices) will be deducted from the publisher-stated copying payments received (see Section 4.1) through a processing charge periodically determined by the Center's Board of Directors, before copying revenues are transmitted quarterly to the serial publishers or authors. Because of the efficiency of the Center's system design, which maximizes computer processing, this internal handling cost will be small (\$0.25 per article copy for 1978), and can be reduced considerably as the volume of reported copying increases. (Reports that handling costs will consume copying payments are therefore completely unfounded, especially since funds contributed by concerned parties will make it unnecessary to amortize the expenses involved in bringing the Center into full operation.)

The Center has also designed its systems, including reporting and payment options, to minimize the incremental internal operating expenses of user organizations.

2.0 OUTLINE OF PROCEDURES

Details of procedures are presented in subsequent sections and appendixes of this handbook. In essence, it is suggested that the following procedures be adopted by copying units in organizations whose staffs or clients need to have photocopies made for them, or to make copies for themselves that are beyond those permitted under the new copyright law, and who wish to use the services of the Center:

2.1 Register with the Center's Operations Office, in order to record the correct address for financial and other transactions, to obtain a corresponding CCC User-Organization Number that can be employed when reporting copying (see Section 3.0), and to receive lists and other information from the Center.

2.2 Report to the Operations Office periodically (usually monthly) their photocopying that requires copying-fee payments, in one of several ways--by sending in marked copies of first pages of the articles copied (see Section

4.2.1), by sending in data logs (see Section 4.2.2), or by providing their copying data in computer-readable form compatible with the system of the Center's operating agency (see Section 4.2.3). Copy-supplying libraries have several options (see Section 4.2.5).

2.3 Pay the fees required for this photocopying by one of several methods, as soon as possible against deposit accounts (once their level of copying is established), but initially after monthly billings by the Center's Operations Office (see Sections 5.1 and 5.2); by payments accompanying copy reporting (see Section 5.3); or by prepayment methods such as the use of stamps or stamping meters if enough users request their availability (see Section 5.4).

3.0 USER-ORGANIZATION REGISTRATION

3.1 General. Each copy-using organization employing the services of the Center should register with the Center's Operations Office, using a copy of the User-Registration Form CCC-U1 (Appendix I). Submission of this form implies the intention of the user organization to comply with the Center's basic requirements, and provides an official address or addresses for financial and other transactions. The user organization will then receive unique CCC User-Organization Number(s) to use when reporting and paying for copying. (Copyright owners have indicated that failure to register with the Center will not exempt organizations from legal obligations to pay copyright owners in some manner.)

3.2 Basic Requirements of the Center. Basic requirements for use of the services of the Copyright Clearance Center, Inc., are relatively few:

3.2.1 Consistently comply with the copying-reporting procedures of Section 4.0.

3.2.2 Keep deposit accounts (if used) at the required level, or pay for invoiced copying within 30 days if possible.

3.2.3 Reproduce all separates or portions of articles exactly as published, with no textual or data alterations of any kind except for addition or notation of published errata, or addition of copyright notice.

3.2.4 Users cannot be authorized by the Center to produce copies for public distribution, e.g., for advertising or promotion purposes, for creating new collective works, or for resale to the general public, as opposed to providing copies for internal use or for specific clients. (The copyright owners should be contacted directly for these and similar purposes.)

3.3 User Provision of An Official Address or Addressee. A user organization may choose to report and to pay for its fee-required copying centrally; if so, it need employ only one copy of the User-Registration Form CCC-U1 (Appendix I). Alternatively, a user organization may choose to register a number of units, eventually establishing deposit accounts for each one (initially

authorizing separate monthly invoicing); if so, it should employ a separate copy of Form CCC-U1 (Appendix I) for each such unit.

3.4 CCC User-Organization Number

3.4.1 After receipt and checking of each User-Registration Form, the Center's Operations Office will issue each user organization or authorized unit a unique CCC User-Organization Number.

3.4.2 The CCC User-Organization Numbers will initially be assigned arbitrarily (consecutively) by the Center. If/when an American National Standard Institute code or codes for libraries and related organizations has been developed, adopted, and is in general use (none is currently available), the Center will consider converting its registration numbers accordingly.

3.5 Registration Fee. The Copyright Clearance Center, Inc., does not contemplate requiring a registration fee.

4.0 USER REPORTING OF FEE-REQUIRED COPYING

4.1 Copying Fees. Users should understand that each individual publisher will set its own individual article-copying fees (if any). The copying-revenue needs of each publisher vary with many factors, and publishers are under legal constraints against agreeing on copying fees. Moreover, the publisher of each serial will retain the right to establish whether or not a given article or other journal document (news story, "Note," editorial, etc.) will or will not carry a copying fee, and what any fee will be.

4.1.1 For Article-Fee Coded Articles. Beginning in 1978, individual publishers of journals, magazines, newsletters, other collections of short works, and separates who desire to use the Center's system (to permit user organizations to pay the Center for fee-required copying, and to receive corresponding revenues from the Center) have been requested by the Center to appropriately publish on the first page of each post-1977 article or short work (hereinafter referred to as "article") for which they require a copying fee a standardized (article-fee) code that both identifies the article (and hence the publisher) and states the specific-article copying fee.

Users will usually find these article-fee code statements at the bottom of the first pages of most post-1977 articles or separates for which CCC-based copying fees are required. Appendix II presents a brief explanation of how these codes are derived, based on the work of ANSI Standards Committee Z39, Subcommittee 34.

4.1.2 For Uncoded Articles. Naturally, no article-fee codes appear on the first pages of articles published before 1978. Where participating publishers wish to require payment through the CCC of copying fees for copyrighted articles that are uncoded, they have been supplied with forms to

provide the Center with a statement of these fees for each serial involved, along with its title and ISSN (International Standard Serial Number).^{*} Because of CCC system limitations, the fees required for uncoded articles for a given serial title will be stated either per-article or per-page, although within these limitations publishers will determine their prices individually.

The Center will shortly prepare and will distribute to each registered CCC User Organization a list of these uncoded-article serial and separates titles and their corresponding copying-fee requirements, and the Center will periodically supply updates. (Additional copies of these lists will be available from the Center for a small fee.) Eventually, these data may be available on-line.

4.2 Methods of Reporting. User organizations may choose among several methods of reporting their fee-required copying to the Center's Operations Office after the copies have been made.

4.2.1 Reporting Copies of First Pages of Articles. User organizations so desiring may make and periodically (usually monthly)** send to the Center's Operations Office bundles of reporting (marked) copies of the first page of each article photocopied for which fee payment is required, or which have been obtained from a source which is neither licensed by the publisher nor desirous of handling fee payments to the Center for users. The user should mark each of these reporting pages with its CCC User-Organization Number and the number of copies made (e.g., "10 Copies"). The user should also check reporting pages for uncoded articles to see that they bear at least the title of the serial, the issue date, and the initial page number of the article; if not, the user should write in the missing data; also, for uncoded articles it should write in the number of pages in the article copied (e.g., "7 Pages"). (See examples in Appendixes III and IV.) See also Section 4.2.6 for additional requirements for reporting copies involving prepayment or payment accompanying reporting.

4.2.2 Reporting Log Sheets. User organizations may alternatively report their fee-required copying periodically (usually monthly)** on copies of the log sheets shown in Appendixes V (for coded articles) or VI (for uncoded articles). This reporting should provide the same data as in Section 4.2.1, as indicated by spaces provided on these forms.

^{*}As explained in Appendix II, some non-serial compendia and separates will need to employ ISBN (International Standards Book Numbers) or STRN (American National Standard Technical Report Numbers).

^{**}User organizations making less than 50 fee-required copies each month may report quarterly.

4.2.3 Computerized Reporting. User organizations wishing to employ computerized transactions reporting should periodically (at least monthly) send to the Center's Operations Office an appropriately prepared computerized record of the article code and copying price for each coded article copied or obtained for which a fee is required, along with the number of copies made of each such article. The Center's Operation Office will shortly be able to supply specifications for this reporting, and on how to report copying of uncoded articles.

4.2.4 Incorrect Reporting. It will cost the Center much more to handle an incomplete or extraneous copying report than it will to process a correct one, because of a penalty clause in the contract operator's requirements. Accordingly, it will be necessary for the Center to charge the user organization \$2 per incomplete report of copying from uncoded articles (for entries that lack the serial's title), and \$1 per extraneous report of copying from serials of any date that are not yet in the Center's system.

4.2.5 Reporting by Copy-Supplying Libraries. A copy-supplying library which receives requests from other libraries or from information businesses to supply copies that are stated to be in excess of any requesting-library rights under Section 107 or 108 may supply such requested copies in one or more of the following ways. (Copy-supplying libraries willing to serve user organizations in any or all of these ways should inform these user organizations as to their specific options.)

1. By itself registering with the Center, reporting and paying for this additional copying to the Center, and handling charges to the requesting organizations in accordance with its individual arrangements with them.
2. By transmitting to the Center (for charging to the requestor) a copy of the Interlibrary Loan (ILL) form for each such fulfilled fee-required request, provided that it has the advance authorization of the requesting library to do this (see Appendixes VII and VIII for appropriately marked copies of the ILL form). However, this procedure will be acceptable to the Center only if the copy-supplying library has checked to see that the requesting library has added to the ILL form its CCC User-Organization Number, the article-fee code for post-1977 articles, the number of copies requested (supplied), and--for pre-1978 articles--the number of pages in the article (regardless of whether this can be derived from the bibliographical data).
3. By receiving from the Center authorization to supply such copies to specific requesting libraries that have previously arranged with the Center to report such

fee-required copies themselves after their receipt. (If the requesting organization desires it, the supplying library may additionally supply a CCC-reporting copy of the first page of each such article without any CCC fee requirement.)

4.2.6 Additional Information Needed When Payment Accompanies Reporting Copies or Log Sheets, or For Prepayment. As noted later in Sections 5.3 and 5.4, user organizations may optionally send payments along with shipments of reporting copies or log sheets, or may be provided with prepayment mechanisms. In all such cases the user organization should calculate and show the total payment required for each copying transaction. For coded articles nothing need be calculated for one copy (the fee is in the copying-fee code); when more than one copy has been made, however, the total fee will simply be the product of the multiplication of the number of fee-required copies made by the per-copy fee included in the article-fee code. For uncoded articles the user should look up (in the list provided by the Center) the unit copying fee required by the serial (multiplying any per-page fee by the number of pages to obtain the per-copy fee), and for multiple copies multiplying the per-copy fee by the number of fee-required copies made. In both cases the total payment should be written onto the reporting copies (e.g., "\$XX.XX Total"), except for single copies of coded articles, or entered on the log sheets in all cases.

4.2.7 Validation of Reporting Shipments. Along with each shipment of reporting copies, logs, or computerized transactions information the Registered User Organization should send a validating cover letter or form showing both the assigned CCC User-Organization Number and the corresponding name and address of the organization, along with appropriate phraseology authorizing charging or indicating prepayment or accompanying payment. (After experience is gained, and if users so desire, it may eventually be possible to drop the requirement (see Section 4.2.1) that all reporting copies carry the CCC User-Organization Number.)

5.0 PAYMENTS TO THE CENTER

5.1 Deposit Accounts. The Center will eventually provide for the establishment and maintenance of deposit accounts appropriate amounts for user organizations. This will not be done initially, however, because it will probably not be possible initially to estimate the appropriate size of such accounts for those user organizations desiring them.

5.2 Monthly Billings. Initially, the Center is willing to provide monthly billings, payable within 30 days, if possible, for user organizations not sending payments with reportings or using prepayment. User organizations should promptly provide the appropriate purchase requisitions if they require their use. Each routine statement will show the number of fee-required copies

reported and the total fee charged. For a nominal additional charge* a user organization may obtain at stated times (as part of an amplified monthly statement, quarterly, semi-annually, or annually) a printout of the details of the amount and cost of its copying from each serial copied during a stated period, with further breakdown at least by year of issue if so specified.

5.3 Payments Accompanying Reporting. Payment for fee-requiring copying may also be made by accompanying each collection of reporting copies or logs with a corresponding adding-machine tape and payment check. As indicated in Section 4.2.6, it will be necessary for this method for the user organization to calculate and to write the total payment required for each copying transaction on the accompanying reporting copy or log. (Such calculations are not required for payments against deposit accounts or billings; for these payment methods all totalings (including lookups) will be done by the Center's Operations Office.)

5.4 Prepayment Methods. If prepayment proves to be desired by a sufficient number of user organizations, the Center will arrange for those organizations reporting their fee-required copying by sending in reporting copies of the first pages of articles to be able to pay for such copying in advance by using standard stamping meters (leased through the Center or otherwise obtained) to print the appropriate coded or listed price (or aggregate for multiple copies) on each reporting copy as evidence of prepayment. Provision of dies bearing the organization's CCC User-Organization Number and prompt on-demand sale of meter loads could be arranged through the Center's Operations Office. Alternatively, if desired, the Center would be able to arrange through its Operations Office for a user organization desiring prepayment to buy CCC adhesive stamps (of trading-stamp size) in panes of 25 in the following denominations: \$0.01, \$0.05, \$0.10, \$0.25, \$0.50, \$1.00, and \$5.00, for affixing to each reporting copy or copies as evidence of prepayment.

Just as for the use of payments accompanying reporting (Section 5.3), it would be necessary for user organizations desiring to prepay with stamping meters or adhesive stamps to calculate and preferably to write on the reporting copy the total payment required and so prepaid. Again, such calculations are not required for payments against deposit accounts or billings.

6.0 CONFIDENTIALITY

The data processing and reporting systems of the Center are so designed as to provide confidentiality to publishers, authors, and user organizations which employ the Center's services. As regards a specific user-organization's reporting, no other user organization would be permitted to learn what serials it copied from, much less what articles it copied.

*For 1978 the base cost will be \$50 plus postage per printout, plus \$0.60 per 1,000 lines, a line being the number of copies from a given serial, the number of copies of an article, etc.

7.0 OTHER MATTERS

7.1 Coverage. The participation in the Center of TSM (technical-scientific-medical) and other serial publishers is on a voluntary basis. However, many of those involved in planning for a center indicated that to improve the universality of the system they would favorably consider an umbrella statute as an amendment to Section 108 of the copyright law which would protect users by permitting their reasonable copying (not for public distribution) of TSM-journal articles published after December 31, 1977, that do not bear the code, subject only to the right of the non-participating TSM journal publisher to collect a reasonable copying fee.

To assist users and to promote the growth of this system, the CCC will shortly publish a list of the serials which have indicated that they will participate in this program, and it will publish additional lists as appropriate. These will be in addition to the lists mentioned in the second paragraph of Section 4.1.2, unless it is decided to combine the lists.

Because demand exist and will grow for the provision of separates of other copyrighted short documents, such as items in other scholarly, general interest, business, and trade periodicals, the publishers of any or all of these can immediately participate in the current program by placing the proper codes on the first pages of their documents and by providing fee data for earlier issues for inclusion in lists. Moreover, non-U.S. serial publishers publishing journals abroad are immediately eligible to use the Center's system. An active program is under way to assure maximum participation.

Certain magazines may be permitted in 1978 not to carry article-fee codes on first pages of articles, but instead to rely on CCC copying-fee statements in their mastheads and on information supplied in the CCC's lists. This seems preferable to not having these magazines immediately available for copying through the CCC's system.

Naturally, libraries and other copying organizations need not report to the Center their copying from serials for which they have copying licenses from publishers; copies of articles which these users have obtained from libraries, information businesses, or other access services operating under license or reporting their copying directly to the Center; or copying from titles not listed as being in the Center's system. To expedite identification, libraries and others may find it effective to mark their shelves or microform holdings with a "CCC" and those titles from which copying requires reporting to the Center, and to insert a tab of a distinctive color in such serial copies or volumes when these serials are removed from the shelves for copying. As mentioned in Section 4.2.4, the Center will initially have to charge \$1 per extraneous entry for copying reports from serials not yet in the Center's system.

7.2 Fair-Use and Section 108d/g Copying. In organizing the Center, TSM and other publishers indicated that they will cooperate with authors, library associations, and others to establish voluntary guidelines for the fair-use and Sect. 108d/g copying that will not require the payment of fees.

User organizations need not, of course, report their fair-use and Section 108d/g copying to the Center. Such reporting was envisioned as desirable in the early planning of the Center because it would have provided research-valuable records of total photocopying. However, it quickly became evident that the Center could not afford to process copying transactions that would yield no operating revenues, and it was also evident that copy-user organizations were not now uniformly willing to report this information. What the Center has done, instead, is to outline a program through which a user organization may optionally arrange with the Center's contract operator (the contractor which operates the Center's Operations Office) to enter its fair-use and/or Section 108d/g records on a proprietary-information basis, so that only the user organization can later obtain details on its total copying. These proprietary records can perhaps be kept in a manner that will satisfy the record-keeping requirements for the guidelines for "Photocopying--Interlibrary Arrangements." Further information will be supplied on request.

7.3 Making Copies from Earlier Copies. Copies made from earlier copies should usually be reported and paid for, except that normal procedures apply where the original copies were correctly made for library use under Section 108b,c of the new copyright law.

7.4 Microform Copying of Articles

7.4.1 Provision as Microforms. The copying of a CCC coded or listed article as a microfilm, whether from the original serial, a paper copy, or another microfilm, is subject to the same fee-payment and other requirements (bearing of a copyright notice, keeping of "Interlibrary Arrangements" guideline records if these privileges are being used, etc.) as for the preparation of a paper copy, and fee-required copying of such articles should be reported and paid for appropriately. (Obviously, some of the optional methods for reporting or prepayment for paper copies cannot be employed.) Provision and payment for a microfiche containing more copyrighted material than the article to be copied can only be done through the CCC system if the microfiche supplied is not suitable for the preparation of additional microfiche or paper copies; otherwise, a direct license from the copyright owner may be required.

7.4.2 Provision of Paper Copies from Microforms. The copying of CCC coded or listed articles on paper from microforms is subject to all of the requirements for the preparation of paper copies from serials or other paper copies.

7.5 Record Keeping. The Center does not require a user organization to keep copying records after it has reported its fee-required copying to the Center. Indeed, as noted in Section 5.2, user organizations will periodically be able to obtain from the Center for a nominal charge (a little more than \$50) complete details on the copying that they have reported, details which have been previously been obtainable internally only at considerable expense. See also the second paragraph in Section 7.2 with respect to fair use and Section 108d/g copying.

APPENDIX I

COPYRIGHT CLEARANCE CENTER, INC.
Operations Office: P. O. Box 765
Schenectady, New York 12301

USER-ORGANIZATION REGISTRATION FORM

Please send a separate copy of this form for each user organization (or separately authorized unit therein) to the Copyright Clearance Center, Inc., Operations Office, P. O. Box 765, Schenectady, N.Y. 12301. Please notify this Operations Office promptly whenever any of the following items are changed.

Name of user organization: _____

Address to be used for billing: _____

Name, address, and telephone number of individual to be contacted for clarifications: _____

Type of Organization:

Library _____

Information Business _____

Not-for-profit access service _____

Other (please specify): _____

For CCC Operations-
Office Assignment

CCC User-Registration
Number Assigned

APPENDIX IIBRIEF EXPLANATION OF CCC ARTICLE-FEE CODES

As mentioned earlier, each serial desiring to collect per-copy fees for 1978 and later articles through the Center has been requested to place a standardized code in a standardized way on the first page of all such articles--a code which uniquely identifies both the article (and hence the serial and its publisher) and the individually designated per-copy fee. This code is preferably accompanied by a copyright notice, both to assure that this statement is presented correctly and as a service to user organizations which otherwise might have to add it to copies themselves under the new law.

Fortunately for the Copyright Clearance Center, Inc., Subcommittee 34 of the American National Standards Institute's Standards Committee Z39 had been appointed in 1976 to develop a code or codes for serial articles, for a variety of purposes which include use for a system involving necessary payments for photocopy(ing) privileges. This Subcommittee developed and discussed several code designs, then two of its members tested on a computerized base of over 270,000 bibliographic references the effect of the presence or absence of specific bibliographic elements on the ability of any code to identify articles uniquely.

This study showed that virtually all of the available bibliographic elements for each article would have to be used to establish unique identification with acceptable accuracy for a multiplicity of uses. This meant that a code structure to include all the necessary bibliographic elements would be both complex and long, because of the wide variety of identification practices still employed by serials. The Subcommittee may eventually develop a standard for such a complete code--essentially, a "bibliographic strip" for an article--but on-going work on an international standard may make this presently untimely, and, again, such a code will be a long one.

Accordingly, Subcommittee 34 of ANSI Committee Z39 developed and will shortly process through ANSI standards-approval procedures a code structure for article identification for use specifically for copyright-fee payments such as those to be used by the Copyright Clearance Center, Inc. This is the code structure which serials wishing to participate in the Center's programs will use to create the article-fee code statements required for the first page of each article for which they require a fee.

This ISSN-based code structure--all-numerical--is as follows. It is a fixed-field code; initial zeroes are employed as needed to left-fill the fields for the Item Number and the Per-Copy Fee. The number of meaningful digits required for each field is shown below them (dividers not counted):

XXXX-XXXX/YY/NNNN-NNNN\$XX.XX/X

| | | | | |
|--------|---------|------|------|-----------|
| Serial | Last | Item | Per- | Author- |
| ISSN | Digits | No. | Copy | Royalty |
| | of Year | | Fee | Indicator |
| 8 | 2 | 8 | 4 | 1 |

Compendia of short documents not issued serially will be employing ISBN's (International Standard Book Numbers) instead of an ISSN's, and publishers of separates that are not in a series will be employing STRN's (American National Standard Technical Report Numbers)--in the later case for all portions of the code preceding the article.

The "Item Number" is a new, arbitrary convention of the system, designed to guarantee unique codes. It is an eight-digit number (separated into two fields of four digits for ease of reading) which each serial may either assign as it sees fit, as long as its method results in a unique number for each "item" in that serial, or which the serial may base on certain bibliographic elements if its dating system permits. Even arbitrary "Item Numbers" can have some bibliographic value if sequential (but not necessarily consecutive) numbers are employed in a given year, but this is not a requirement of the system. For example, some serials might find it useful to employ numbers assigned to manuscripts. However, a serial that does desire to build some bibliographical significance into its Item Numbers, against the possibility of having them cited to it frequently, might develop this eight-digit field by using the structure MMDD-PPPP, where MM might stand for the (always-two-digit) month of issue (01 to 12), DD for the (always-two-digit) day of issue (01 to 31), and PPPP for the (always-four-digit) number of the first page of the article (0001 to 9999). Other serials may insert their volume and issue numbers in the MMDD fields. Still other conventions are likely, so user organization will need to learn what system a serial is employing before trying to use Item-Number data bibliographically.

Some examples may prove instructive:

1. In a 1978 May 21 (78-05-21) issue of a journal which has XXXX-XXXX as its ISSN, the code statement for an article beginning on page 243 (0243) to which the journal has assigned a bibliographically based Item Number of 0521-0243 and a per-copy fee of \$X.XX (\$0X.XX), but for which no author royalty is involved, would be:

XXXX-XXXX/78/0521-0243\$0X.XX/0
© 1978 Name of Copyright Owner

2. In a nonserial collective work copyrighted in 1978 which has as its ISBN X-XX-XXXXXX-X, the code statement for an "article" beginning on page 32 to which the publisher has assigned a bibliographically based Item Number of 32 and a per-copy fee of \$X.XX (\$0X.XX), and for which an author royalty is involved, would be:

X-XX-XXXXXX-X/78/0000-0032\$0X.XX/1
© 1978 Name of Copyright Owner

3. For a separate not issued in a series, the code statement could be as follows for a separate having as its (STRN) "separate" number PUBR-78/0312 (where the Report Code assigned to the publisher

-14-

is PUBR and the separate is that publisher's 312th (0312) in 1978), having been assigned a copying fee of \$X.XX (\$0X.XX), and having no author-royalty arrangement:

PUBR-78/0312\$0X.XX/0

© 1978 Name of Copyright Owner

EXAMPLE OF A MARKED REPORTING COPY FOR A CODED ARTICLE

| | | |
|----------------------------------------------------------------|-----------------------|----------------------------|
| Textual Material | | |
| 0000-0000/78/0701-0152\$XX.XX -152- Copr. 1978 Named Publisher | | |
| XXX-XXXX ^① | 3 Copies ^② | \$NN.NN Total ^③ |

Needed to Be Added

1. CCC User-Organization Number
2. Number of copies made.

Needed Only When Prepaying, or When
Paying with Reporting

3. Total copying fee (per-copy fee in code multiplied by the number of copies).

EXAMPLE OF A MARKED REPORTING COPY FOR AN UNCODED ARTICLE

| | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------------|
| XXX-XXXX ^④ | 4 Copies ^⑤ | 9 Pages ^⑥ | \$NN.NN Total ^⑦ |
| ③ | ① | ② | |
| IEEE TRANSACTIONS ON ENGINEERING MANAGEMENT, MAY 1977 | | | |
| <p>able to select, hence to limit and rank, the ideas which the forthcoming R&D program can cover.</p> <p>5) In the process of selection, the results expected from R&D after implementation will be evaluated:</p> <p>a) <i>quantitatively</i>, for prevailingly economic targets;</p> <p>b) <i>qualitatively</i>, for prevailingly social targets.</p> <p>6) In order to rank ideas, i.e., to determine priorities, the following criteria will be utilized:</p> <p>a) for economic problems, <i>the efficiency criterion</i>, together with the criterion of the minimum possible risk;</p> <p>b) for social problems, <i>the urgency criterion</i>, restricted by their scope.</p> <p>7) The R&D program to be worked out on the basis of this methodology is considered to represent one stage in the continuous R&D process, always going on, on a wider scale and</p> | <p>luting the environment, hygienization of life, finding and exploring new sources of food, water desalinization, creation of new materials, more comfortable means of public transport, etc. This expenditure is recovered only over a very long range, by a gradual prevention and reduction of the outlay on health protection, by cutting the infant death rate, by lengthening the average life expectancy, and, finally, by raising the level of social labor productivity.</p> <p style="text-align: center;">IV. HOW TO COLLECT IDEAS GENERATING NATIONAL R&D</p> <p>Collecting ideas is one of the most difficult problems. Why? First of all, because at that stage the idea does not yet enjoy</p> | | |

To Be Added If
Not on First Page

1. Title of serial.
2. Date of issue.
3. First page number.

Needed to Be Added

4. CCC User-Organization Number.
5. Number of copies made.
6. Number of pages in article.

Needed Only When Prepaying, or
When Paying With Reporting

7. Total copying fee (the number of copies times the per-copy fee for the serial in the CCC's list, sometimes first requiring multiplying a per-page fee by the number of pages in the article).

Example Used With the Permission of the
 Institute of Electrical and Electronic Engineers

ILL FORM MARKED TO REPORT A CODED ARTICLE

[illegible]

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| Date of request Call No. | Not numbered file Subject | Book title, vol., and date Author Edition, place, publisher, price, series, OR: periodical article author, title, page, 3. OR: Title in English Verified in OP: in English in ISBN, ISSN, or LC card, or OCLC, or other reference If non-English, codes for indexed file No. of Copies No. of Pages (Optional) Total CCC Copying Fee |
| Request complies with <input type="checkbox"/> 100% (2) Guaranteed (CCC) <input type="checkbox"/> Other provisions of Copyright Law (1976) <input type="checkbox"/> CCC procedures | | |

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Requesting organization would then add the appropriate one of the following authorization statements (whichever is permitted by the copy-supplying library):

1. Please pay copying fee to CCC; we will reimburse you.
2. Please transmit this ILL form to CCC; we authorize it to charge us.
3. We will pay the copying fee directly to the CCC after your fulfillment.